1871

1871 Nov. 17. argued Dana for h. E.
Bristow for U.S.

Nov. 27. Affd Sleeper ~~Chase Justice~~
Dec 9. R.C.

Distilled Spirits 11 Wall. 355

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~271~~ 470

DAVIS R. STOCKWELL AND JOHN L. CUTLER, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE.

FILED OCTOBER 28, 1870.

Bristow.
act of 1864 not repealed by act of 1866.
Hendricks v Bowen 11 Wall.
U. States v Tyler 11 Wall.

Internal Rev acts not 15 St. 140 remedial - Sanction Act

SUPREME COURT OF THE UNITED STATES.

No. 271.

DAVIS R. STOCKWELL AND JOHN L. CUTLER, PLAINTIFFS IN ERROR,

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE.

INDEX.

	Original.	Print.
Writ of error	1	1
Return on writ of error	2	1
Copy of judgment of circuit court	3	1
Transcript of record of district court	5	2
Declaration in original writ	5	2
Amendment of original writ	26	13
Pleadings	26	13
Names of jurymen	27	13
Verdict	27	14
Bill of exceptions	30	15
Prayers for instructions	32	16
Rulings of the court	33	17
Commission to take deposition	36	19
Execution of commission	37	19
Objections to deposition	38	20
Search warrant	39	20
Returns on search warrant	40	21
Objections to search warrant	40	21
Entry of judgment in district court	41	22
Authentication of district court record	43	23
Entry of judgment in circuit court	44	23
Authentication of circuit court record	46	23
Bond	47	24
Citation	50	25
Service of citation	52	25

1 *Writ of error.*

UNITED STATES OF AMERICA:

[SEAL.] The President of the United States of America to the justices of the circuit court of the United States for the district of Maine, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea, which is in the said circuit court, between Davis R. Stockwell and John L. Cutler, both of Bangor, in the district of Maine, plaintiffs in error, and The United States of America, defendants in error, manifest error has intervened, to the great damage of the said Davis R. Stockwell and John L. Cutler, as by their complaint appears:

And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning the same, and this writ, so that you have the same before the Supreme Court of the United States to be holden at Washington, in the District of Columbia, on the first Monday of December next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right and according to
2 the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court at Washington aforesaid, this first day of September, in the year of our Lord one thousand eight hundred and seventy.

GEO. F. EMERY, *Clerk.*

Allowed by—

GEORGE F. SHEPLEY,
U. S. Circuit Judge First Judicial District.

Return on writ of error.

MAINE DISTRICT, *ss:*

CIRCUIT COURT OF THE UNITED STATES.

And now here the judges of the circuit court of the United States, in and for said district, make return of this writ, by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and process in the suit within mentioned, and of all proceedings therein.

In testimony whereof I, Geo. F. Emery, clerk of said circuit court, have hereunto set my hand and the seal of said court this first day of September, A. D. 1870.

[SEAL.] GEO. F. EMERY, *Clerk.*

3 *Copy of judgment of cir. court.*

UNITED STATES OF AMERICA, *District of Maine, ss:*

At a term of the circuit court of the United States for the first circuit, begun and holden at Portland, within and for the district of Maine, on (Saturday) the twenty-third day of April, in the year of our Lord one thousand eight hundred and seventy:

1 *Writ of error.*

UNITED STATES OF AMERICA:

[SEAL.] The President of the United States of America to the justices of the circuit court of the United States for the district of Maine, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea, which is in the said circuit court, between Davis R. Stockwell and John L. Cutler, both of Bangor, in the district of Maine, plaintiffs in error, and The United States of America, defendants in error, manifest error has intervened, to the great damage of the said Davis R. Stockwell and John L. Cutler, as by their complaint appears:

And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning the same, and this writ, so that you have the same before the Supreme Court of the United States to be holden at Washington, in the District of Columbia, on the first Monday of December next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right and according to
2 the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court at Washington aforesaid, this first day of September, in the year of our Lord one thousand eight hundred and seventy.

GEO. F. EMERY, *Clerk.*

Allowed by—

GEORGE F. SHEPLEY,
U. S. Circuit Judge First Judicial District.

Return on writ of error.

MAINE DISTRICT, *ss:*

CIRCUIT COURT OF THE UNITED STATES.

And now here the judges of the circuit court of the United States, in and for said district, make return of this writ, by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and process in the suit within mentioned, and of all proceedings therein.

In testimony whereof I, Geo. F. Emery, clerk of said circuit court, have hereunto set my hand and the seal of said court this first day of September, A. D. 1870.

[SEAL.] GEO. F. EMERY, *Clerk.*

3 *Copy of judgment of cir. court.*

UNITED STATES OF AMERICA, *District of Maine, ss:*

At a term of the circuit court of the United States for the first circuit, begun and holden at Portland, within and for the district of Maine, on (Saturday) the twenty-third day of April, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable Nathan Clifford, associate justice of the Supreme Court, and the Honorable Edward Fox, district judge.

DAVIS R. STOCKWELL & AL., IN ERROR, vs. THE UNITED STATES. } N. E., 9.

4 And now come Davis R. Stockwell and John L. Cutler, both of Bangor, in said district, by W. C. Crosby, their attorney, and complain that, in the record and proceedings, and also in the rendition of judgment, in a cause or action of debt between The United States of America, plaintiffs, and said Davis R. Stockwell and John L. Cutler, defendants, tried in the district court of the United States for said Maine district, at December term thereof, A. D. eighteen hundred and sixty-nine, and in which judgment was rendered against them, said Davis R. Stockwell and John L. Cutler, on the thirty-first day of January,
5 A. D. eighteen hundred and seventy, manifest error hath intervened, to the great damage of the said Stockwell and Cutler.

Wherefore they pray for the allowance of a writ of error, and such other process as may cause the same to be corrected by the circuit court aforesaid.

Whereupon a writ of error is duly issued and allowed, as prayed for, wherein the said district court is commanded to send the record and process in the suit aforesaid to our said circuit court, and the same is duly returned with the following—

Transcript of the record of the district court, viz :

UNITED STATES OF AMERICA, *Maine District, ss :*

At a district court of the United States, begun and holden at Portland, within and for Maine district, on the first Tuesday (being the seventh day) of December, in the year of our Lord one thousand eight hundred and sixty-nine:

Before Honorable Edward Fox, judge of said court.

Declaration.

THE UNITED STATES OF AMERICA, PLAINTIFFS, vs. DAVIS R. STOCKWELL, LEEMAN STOCKWELL, AND John L. Cutler, of Bangor, merchants, and partners under the firm of D. R. Stockwell & Co., in a plea of debt. } No. 22.

No. 1. For that certain goods, wares, and merchandise, to wit, 384¾ thousand shingles, of the value of three thousand dollars, being subject to the payment of duties by law, were, on the 18th day
6 of June, in the year of our Lord eighteen hundred and sixty-three, imported and brought from some foreign port or place, to wit, from New Brunswick, by the vessel called the "Highlander," into the United States, to wit, into Bangor, in the district of Maine, by certain persons unknown, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject; and, being so brought, were on the same day received, concealed, and bought by the said defendants at said Bangor, said defendants well knowing that said goods, wares, and merchandise were illegally im-

Act 1823.

ported into the United States, and were liable to seizure by virtue of an act relating to the revenue of said United States, the said duties to which the same were so subject not having been before that time paid or secured to be paid, and with intent to defraud the revenue of the said United States, against the form of the statute of said United States in such case made and provided; whereby they forfeited and became liable to pay a sum double the value of said goods, which the plaintiffs aver is the sum of six thousand dollars.

No. 2. For that certain goods, wares, and merchandise, to wit, 156¼ thousand shingles, of the value of one thousand dollars, being subject to the payment of duties by law, were, on the fourth day of July, in the year of our Lord eighteen hundred and sixty-three, imported and brought from some foreign port or place, to wit, from New Brunswick, by the vessel called the "Express," into the United States, to wit, into Bangor, in the district of Maine, by persons unknown, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject; and, being so brought, were on the same day received, concealed, and bought by the said defendants at said Bangor, well knowing that the same had been illegally imported into said United States, and were liable to seizure by virtue of an act in relation to the revenue of said United States, the said duties to which
7 the same were so subject not having been before that time paid or secured to be paid, and with intent to defraud the revenue of the said United States, against the form of the statute of said United States in such case made and provided; whereby they forfeited and became liable to pay a sum double the value of said goods, which the plaintiffs aver is the sum of two thousand dollars.

No. 3. For that certain goods, wares, and merchandise, to wit, 334½ thousand of shingles, of the value of twenty-five hundred dollars, being subject to the payment of duties by law, were, on the 28th day of July, in the year of our Lord eighteen hundred and sixty-three, imported and brought from some foreign port or place, to wit, from New Brunswick, by the vessel called the "Phenix," into the United States, to wit, into Bangor, in the district of Maine, by persons unknown, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject; and, being so brought, were on the same day received, concealed, and bought by the said defendants, well know-
Act 1823. ing the same to have been illegally imported into said United States, and to be liable to seizure by virtue of an act in relation to the revenue, at said Bangor, the said duties to which the same were so subject not having been before that time paid or secured to be paid, and with intent to defraud the revenue of the said United States, against the form of the statute of said United States in such case made and provided; whereby they forfeited and became liable to pay a sum double the value of said goods, which the plaintiffs aver is the sum of five thousand dollars.

No. 4. For that certain goods, wares, and merchandise, to wit, 107½ thousand of shingles, of the value of one thousand dollars, being subject to the payment of duties by law, were, on the 23d day of September, in the year of our Lord eighteen hundred and sixty-three,
8 imported and brought from some foreign port or place, to wit, from New Brunswick, by the vessel "Express," into the United States, to wit, into Bangor, in the district of Maine, by persons unknown, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject; and, being so brought, were on the same day received, concealed, and bought by the said de-

fendants, well knowing the same to have been illegally imported into said United States, and to be liable to seizure by virtue of an act in relation to the revenue of the United States, at said Bangor, the said duties to which the same were so subject not having been before that time paid or secured to be paid, and with intent to defraud the revenue of the said United States, against the form of the statute of said United States in such case made and provided; whereby they forfeited and became liable to pay a sum double the value of said goods, which the plaintiffs aver is the sum of two thousand dollars.

No. 5. For that certain goods, wares, and merchandise, to wit, 332¼ thousand of shingles, of the value of twenty-five hundred dollars, being subject to the payment of duties by law, were, on the seventeenth day of October, in the year of our Lord eighteen hundred and sixty-three, imported and brought from some foreign port or place, to wit, from New Brunswick, by the vessel "Linnet," into the United States, to wit, into Bangor, in the district of Maine, by persons unknown, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject; and, being so brought, were on the same day received, concealed, and bought by the said defendants, well knowing the same to have been illegally imported into said United States, and to be liable to seizure by virtue of an act relating to the revenue of said United States, at said Bangor, the said duties to which the same were so subject not having been before that time paid or secured to be paid, and with intent to defraud the revenue of the said United
9 States, against the form of the statute of said United States in such case made and provided; whereby they forfeited and became liable to pay a sum double the value of the said goods, which the plaintiffs aver is the sum of five thousand dollars.

No. 6. For that certain goods, wares, and merchandise, to wit, 28¾ thousand of shingles, of the value of two thousand dollars, being subject to the payment of duties by law, were, on the 30th day of October, in the year of our Lord eighteen hundred and sixty-three, imported and brought from some foreign port or place, to wit, from New Brunswick, by the vessel "Condor," into the United States, to wit, into Bangor, in the district of Maine, by persons unknown, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject; and, being so brought, were on the same day received, concealed, and bought by the said defendants, well knowing the same to have been illegally imported into said United States, and to be liable to seizure by virtue of an act in relation to the revenue of said United States, at said Bangor, the said duties to which the same were so subject not having been before that time paid or secured to be paid, and with intent to defraud the revenue of the said United States against the form of the statute of said United States in such case made and provided; whereby they forfeited and became liable to pay a sum double the value of said goods, which the plaintiffs aver is the sum of four thousand dollars.

No. 7. For that certain goods, wares, and merchandise, to wit, 170 thousand of shingles, of the value of one thousand dollars, being subject to the payment of duties by law, were, on the fifth day of May, in the year of our Lord eighteen hundred and sixty-four, imported and brought from some foreign port or place, to wit, from New Brunswick, by the vessel "Highlander," into the United States, to wit, into Bangor,
10 in the district of Maine, by persons unknown, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject; and, being so brought, were on the

same day received, concealed, and bought by the said defendants, well knowing the same to have been illegally imported into said United States, and to be liable to forfeiture by virtue of an act in relation to the revenue of said United States, at said Bangor, the said duties to which the same were so subject not having been before that time paid or secured to be paid, and with intent to defraud the revenue of the said United States against the form of the statute of said United States in such case made and provided; whereby they forfeited and became liable to pay a sum double the value of said goods, which the plaintiffs aver is the sum of two thousand dollars.

No. 8. For that certain goods, wares, and merchandise, to wit, 100 thousand of shingles, of the value of seven hundred dollars, being subject to the payment of duties by law, were, on the eighteenth day of August, in the year of our Lord eighteen hundred and sixty-four, imported and brought from some foreign port or place, to wit, from New Brunswick, by the vessel "Bay Queen," into the United States, to wit, into Bangor, in the district of Maine, by persons unknown, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject; and, being so brought, were on the same day concealed by the said defendants, well knowing the same to have been illegally imported into said United States, and to be liable to seizure by virtue of an act in relation to the revenue of said United States, at said Bangor, the said duties to which the same were so subject not having been before that time paid, or secured to be paid, and with intent to defraud the revenue of the said United States against the form of the statute of said United States in such case made and provided; whereby they forfeited and became liable to pay a sum
11 double the value of said goods, which the plaintiffs aver is the sum of fourteen hundred dollars.

No. 9. For that certain goods, wares, and merchandise, to wit, 156¼ thousand of shingles, of the value of one thousand dollars, were, on the fourth day of July, in the year of our Lord eighteen hundred and sixty-three, imported and brought from some foreign country, to wit, from New Brunswick, by the schooner Express, into said United States, and into the district of Maine; and on the same day, in the year aforesaid, at the office of the collector of the customs of the said United States, at Bangor, in said district of Maine, the defendants, then and there the owners, consignees, and agents of the said goods, wares, and merchandise so imported and brought, which goods, wares, and merchandise were then and there subject to duty by law, knowingly did attempt to make, and knowingly did make, an entry of said goods, wares, and merchandise by means of a false invoice, and by means of an invoice which did not contain a true statement of all the particulars required in the first section of the act of Congress of said United States, approved March third, eighteen hundred and sixty-three, entitled "An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes;" and by means of a false certificate upon said invoice of a consul, vice-consul, and commercial agent of said United States nearest the place of shipment of said goods, wares, and merchandise in said foreign country; also by means of a false and fraudulent document and paper, and of certain false and fraudulent practices and appliances, that is to say, by the production of false certificates of a deputy collector of said United States, and false certificates of consuls of the United States, and of certain merchants, that said shingles were of the manufacture and production of said United
12 States, when in fact they were of the manufacture and production

of New Brunswick, and said defendants knew that the said shingles were the production and manufacture of said New Brunswick:

Also by falsely and knowingly entering the said goods, wares, and merchandise as free, and without the payment of duties, as the production and manufacture of said United States; whereas in fact the said goods, wares, and merchandise were not the production and manufacture of said United States, and were subject to duty by law, and said defendants knew said goods, wares, and merchandise were not the production and manufacture of said United States, and were so subject to duty by law:

Contrary to the form of the statute of the said United States in such case made and provided, whereby, and by force of said statute, said goods, wares, and merchandise entered by means of said invoice, or the value thereof, became forfeited to the said United States. And the plaintiffs aver that thereafterwards, on the same day, the said defendants concealed, removed, and converted to their own use all of said goods, wares, and merchandise, so that the same could not be come at to be seized for said violation of law; by reason whereof the said defendants forfeited and became liable to pay to the plaintiffs the said value thereof, to wit, the sum of one thousand dollars.

No. 10. For that certain goods, wares, and merchandise, to wit, 344½ thousand shingles, of the value of twenty-five hundred dollars, were, on the 28th day of July, in the year of our Lord eighteen hundred and sixty-three, imported and brought from some foreign country, to wit, from New Brunswick, by the schooner Phenix, into said United States, and into the district of Maine; and on the same day, in the year aforesaid, at the office of the deputy collector of the customs of the said United States, at Bangor, in said district of Maine, the defendants then
13 and there, the owners, consignees, and agents of the said goods, wares, and merchandise so imported and brought, which goods, wares, and merchandise were then and there subject to duty by law, knowingly did attempt to make, and knowingly did make, an entry of said goods, wares, and merchandise by means of a false invoice, and by means of an invoice which did not contain a true statement of all the particulars required in the first section of the act of Congress of said United States, approved March third, eighteen hundred and sixty-three, entitled "An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes;" and by means of a false certificate upon said invoice of a consul, vice-consul, and commercial agent of said United States nearest the place of shipment of said goods, wares, and merchandise in said foreign country; also by means of a false and fraudulent document and paper, and of certain false and fraudulent practices and appliances, that is to say, by the production of false certificates of a deputy collector of said United States, and false certificates of a consul of said United States, and of certain merchants, that said shingles were of the production and manufacture of the United States, when in fact they were the production and manufacture of said New Brunswick, and the defendants knew that said shingles were the production and manufacture of said New Brunswick:

Also by falsely and knowingly entering the said goods, wares, and merchandise as free, and without the payment of duties, as the production and manufacture of said United States; whereas in fact the said goods, wares, and merchandise were not the production and manufacture of said United States, and were subject to duty by law, and said defendants knew said goods, wares, and merchandise, were not the

production and manufacture of said United States, and were so subject to duty by law:

Contrary to the form of the statute of the said United States
14 in such case made and provided; whereby, and by force of said statute, said goods, wares, and merchandise, entered by means of said invoice, or the value thereof, became forfeited to the said United States. And the plaintiffs aver that thereafterwards, on the same day, the said defendants concealed, removed, and converted to their own use all of said goods, wares, and merchandise, so that the same could not be come at to be seized for said violation of law; by reason whereof the said defendants forfeited and became liable to pay to the plaintiffs the said value thereof, to wit, the sum of twenty-five hundred dollars.

No. 11. For that certain goods, wares, and merchandise, to wit, 107½ thousand of shingles, of the value of one thousand dollars, were, on the 23d day of September, in the year of our Lord eighteen hundred and sixty-three, imported and brought from some foreign country, to wit, from New Brunswick, by the schooner Express, into said United States, and into the district of Maine; and on the same day, in the year aforesaid, at the office of the deputy collector of the customs of the said United States, at Bangor, in said district, the defendants then and there, the owners, consignees, and agents of the said goods, wares, and merchandise so imported and brought, which goods, wares, and merchandise were then and there subject to duty by law, knowingly did attempt to make, and knowingly did make, an entry of said goods, wares, and merchandise by means of a false invoice, and by means of an invoice which did not contain a true statement of all the particulars required in the first section of the act of Congress of said United States, approved March third, eighteen hundred and sixty-three, entitled "An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes;" and by means of a false certificate upon said invoice of a consul, vice-consul, and commercial agent of said United States nearest the place of shipment of said goods, wares, and merchan-
15 dise in said foreign country; also by means of a false and fraudulent document and paper, and of certain false and fraudulent practices and appliances, that is to say, by the production of false certificates of a consul of the United States, and of certain merchants, that said shingles were the production and manufacture of said United States, when in fact they were said production and manufacture of said New Brunswick, and the defendants knew said shingles were the production and manufacture of said New Brunswick:

Also by falsely and knowingly entering the said goods, wares, and merchandise as free, and without the payment of duties, as the production and manufacture of said United States; whereas in fact the said goods, wares, and merchandise were not the production and manufacture of said United States, and were subject to duty by law, and said defendants knew said goods, wares, and merchandise were not the production and manufacture of said United States, and were so subject to duty by law:

Contrary to the form of the statute of the said United States in such case made and provided, whereby, and by force of said statute, said goods, wares, and merchandise entered by means of said invoice, or the value thereof, became forfeited to the said United States. And the plaintiffs aver that thereafterwards, on the same day, the said defendants concealed, removed, and converted to their own use, all of said goods, wares, and merchandise, so that the same could not be come at to

be seized for said violation of law; by reason whereof the said defendants forfeited and became liable to pay to the plaintiffs the said value thereof, to wit, the sum of one thousand dollars.

No. 12. For that certain goods, wares, and merchandise, to wit, 332¼ thousand of shingles, of the value of twenty-five hundred dollars,
16 were, on the 17th day of October, in the year of our Lord eighteen hundred and sixty-three, imported and brought from some foreign country, to wit, from New Brunswick, by the schooner "Linnet," into said United States, and into the district of Maine; and on the same day, in the year aforesaid, at the office of the deputy collector of the customs of the said United States, at Bangor, in said district of Maine, the defendants then and there, the owners, and persons unknown, consignees and agents of the said goods, wares, and merchandise so imported and brought, which goods, wares, and merchandise were then and there subject to duty by law, knowingly did attempt to make, and knowingly did make, an entry of said goods, wares, and merchandise by means of a false invoice, and by means of an invoice which did not contain a true statement of all the particulars required in the first section of the act of Congress of said United States, approved March third, eighteen hundred and sixty-three, entitled "An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes;" and by means of a false certificate upon said invoice of a consul, vice-consul, and commercial agent of said United States nearest the place of shipment of said goods, wares, and merchandise, in said foreign country; also by means of a false and fraudulent document and paper, and of certain false and fraudulent practices and appliances, that is to say, by the production of false certificates of a deputy collector of the United States, and false certificates of a consul of said United States, and of certain merchants, that said shingles were of the production and manufacture of said United States, when in fact they were the production and manufacture of said New Brunswick, and said defendants knew that said shingles were the production and manufacture of said New Brunswick:

Also by entering the said goods, wares, and merchandise as
17 free, and without the payment of duties, as the production and manufacture of said United States; whereas in fact the said goods, wares, and merchandise were not the production and manufacture of said United States, and were subject to duty by law, and said defendants knew said goods, wares, and merchandise were not the production and manufacture of said United States, and were so subject to duty by law:

Contrary to the form of the statute of the said United States in such case made and provided, whereby, and by force of said statute, said goods, wares, and merchandise entered by means of said invoice, or the value thereof, became forfeited to the said United States. And the plaintiffs aver that thereafterwards, on the same day, the said defendants concealed, removed, and converted to their own use, all of said goods, wares, and merchandise, so that the same could not be come at to be seized for said violation of law; by reason whereof the said defendants forfeited and became liable to pay to the plaintiffs the said value thereof, to wit, the sum of twenty-five hundred dollars.

No. 13. For that certain goods, wares, and merchandise, to wit, 283¾ thousand of shingles, of the value of two thousand , were, on the 30th day of October, in the year of our Lord eighteen hundred and sixty-three, imported and brought from some foreign country, to wit, from New

Brunswick, by schooner Condor, into said United States, and into the district of Maine; and on the same day, in the year aforesaid, at the office of the deputy collector of the customs of the said United States, at Bangor, in said district of Maine, the defendants then and there, the owners, and persons unknown, consignees and agents of the said goods, wares, and merchandise so imported and brought, which goods, wares, and merchandise were then and there subject to duty by law, knowingly did
18 attempt to make, and knowingly did make, an entry of said goods, wares, and merchandise by means of a false invoice, and by means of an invoice which did not contain a true statement of all the particulars required in the first section of the act of Congress of said United States, approved March third, eighteen hundred and sixty-three, entitled "An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes;" and by means of a false certificate upon said invoice of a consul, vice-consul, and commercial agent of said United States nearest the place of shipment of said goods, wares, and merchandise in said foreign country; also by means of a false and fraudulent document and paper, and of certain false and fraudulent practices and appliances, that is to say, by the production of false certificates of a deputy collector of said United States, and false certificates of a consul of said United States, and of certain merchants, that said shingles were the manufacture and production of said United States, when, in fact, they were the manufacture and production of said New Brunswick, and said defendants knew that said shingles were the manufacture and production of said New Brunswick:

By falsely and knowingly entering the said goods, wares, and merchandise as free, and without the payment of duties, as the production and manufacture of said United States; whereas in fact the said goods, wares, and merchandise were not the production and manufacture of said United States, and were subject to duty by law, and said defendants knew said goods, wares, and merchandise were not the production and manufacture of said United States, and were so subject to duty by law:

Contrary to the form of the statute of the said United States in such case made and provided, whereby, and by force of said statute, said goods, wares, and merchandise entered by means of said invoice,
19 or the value thereof, became forfeited to the said United States.

And the plaintiffs aver that thereafterwards, on the same day, the said defendants concealed, removed, and converted to their own use all of said goods, wares, and merchandise, so that the same could not be come at to be seized for said violation of law; by reason whereof the said defendants forfeited and became liable to pay to the plaintiffs the said value thereof, to wit, the sum of two thousand dollars.

No. 14. For that certain goods, wares, and merchandise, to wit, 170 thousand shingles, of the value of one thousand dollars, were, on the 5th day of May, in the year of our Lord eighteen hundred and sixty-four, imported and brought from some foreign country, to wit, from New Brunswick, by the schooner "Highlander," into said United States, and into the district of Maine; and on the same day, in the year aforesaid, at the office of the deputy collector of the customs of the said United States, at Bangor, in the said district of Maine, the defendants then and there, the owners, and persons unknown, consignees and agents of the said goods, wares, and merchandise so imported and brought, which goods, wares, and merchandise were then and there subject to duty by law, knowingly did attempt to make, and knowingly did make, and entry of said goods, wares, and merchandise by means of a false invoice, and

by means of an invoice which did not contain a true statement of all the particulars required in the first section of the act of Congress of said United States, approved March third, eighteen hundred and sixty-three, entitled "An Act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes;" and by means of a false certificate upon said invoice of a consul, vice-consul, and commercial agent of said United States nearest the place of shipment of said goods
20 wares, and merchandise in said foreign country; also by means of a false and fraudulent document and paper, and of certain false and fraudulent practices and appliances, that is to say, by the production of false certificates of a deputy collector of said United States, and false certificates of a consul of said United States, and of certain merchants, that said shingles were the production and manufacture of said United States, when in fact they were the production and manufacture of said New Brunswick, and said defendants knew that said shingles were the production and manufacture of said New Brunswick:

By falsely and knowingly entering the said goods, wares, and merchandise as free, and without the payment of duties, as the production and manufacture of said United States; whereas in fact the said goods, wares, and merchandise were not the production and manufacture of said United States, and were subject to duty by law, and said defendants knew said goods, wares, and merchandise were not the production and manufacture of said United States and were subject to duty by law:

Contrary to the form of the statute of the said United States in such case made and provided, whereby, and by force of said statute, said goods, wares, and merchandise entered by means of said invoice, or the value thereof, became forfeited to the said United States. And the plaintiffs aver that thereafterwards, on the same day, the said defendants concealed, removed, and converted to their own use, all of said goods, wares, and merchandise, so that the same could not be come at to be seized for said violation of law; by reason whereof the said defendants forfeited and became liable to pay to the plaintiffs the said value thereof, to wit, the sum of one thousand dollars.

No. 15. For that certain goods, wares, and merchandise, to wit, 100 thousand shingles, of the value of seven hundred dollars, were,
21 on the 18th day of August, in the year of our Lord eighteen hundred and sixty-four, imported and brought from some foreign country, to wit, from New Brunswick, by schooner Bay Queen, into said United States, and into the district of Maine; and on the same day, in the year aforesaid, at the office of the deputy collector of the customs of the said United States, at Bangor, in said district of Maine, the defendants then and there, the owners, and persons unknown, consignees and agents of the said goods, wares, and merchandise so imported and brought, which goods, wares, and merchandise were then and there subject to duty by law, knowingly did attempt to make, and knowingly did make, an entry of said goods, wares, and merchandise by means of a false invoice, and by means of an invoice which did not contain a true statement of all the particulars required in the first section of the act of Congress of said United States, approved March third, eighteen hundred and sixty-three, entitled "An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes;" and by means of a false certificate upon said invoice of a consul, vice-consul, and commercial agent of said United States nearest the place of shipment of said goods, wares, and merchandise in said foreign country;

also by means of a false and fraudulent document and paper, and of certain false and fraudulent practices and appliances, that is to say, by the production of false certificates of a deputy collector of said United States, and false certificates of a consul of said United States, and of certain merchants, that said shingles were the production and manufacture of said United States, when in fact they were the production and manufacture of said New Brunswick, and defendants knew said shingles were the production and manufacture of said New Brunswick:

22 By falsely and knowingly entering the said goods, wares, and merchandise as free, and without the payment of duties, as the production and manufacture of said United States; whereas in fact the said goods, wares, and merchandise were not the production and manufacture of said United States, and were subject to duty by law, and defendants knew said goods, wares, and merchandise were not the production and manufacture of said United States, and were so subject to duty by law:

Contrary to the form of the statute of the said United States in such case made and provided, whereby, and by force of said statute, said goods, wares, and merchandise entered by means of said invoice, or the value thereof, became forfeited to the said United States. And the plaintiffs aver that thereafterwards, on the same day, the said defendants concealed, removed, and converted to their own use, all of said goods, wares, and merchandise, so that the same could not be come at to be seized for said violation of law; by reason whereof the said defendants forfeited and became liable to pay to the plaintiffs the said value thereof, to wit, the sum of seven hundred dollars.

No. 16. For that certain goods, wares, and merchandise, being subject to the payment of duties by law, to wit, 383¾ thousand shingles, were, on the 18th day of June, in the year of our Lord eighteen hundred and sixty-three, imported and brought from some foreign port or place, to wit, from New Brunswick, into the United States, to wit, into Bangor, in said district of Maine, by the said defendants, and their authorized agents, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject, against the form of the statute of said United States in such case made and provided; whereby, and by force of said statute, said defendants became liable to pay the sums to which said goods, wares, and merchandise were then and there liable and subject for duties in coin, which is the sum of five hundred dollars in coin.

23 No. 17. For that certain goods, wares, and merchandise, being subject to the payment of duties by law, to wit, 156¼ thousand of shingles, were, on the 4th day of July, in the year of our Lord eighteen hundred and sixty three, imported and brought from some foreign port or place, to wit, from New Brunswick, into the United States, to wit, into Bangor, in said district of Maine, by the said defendants and their authorized agents, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject, against the form of the statute of said United States in such case made and provided; whereby, and by force of said statute, said defendants became liable to pay the sums to which said goods, wares, and merchandise were then and there liable and subject for duties in coin, which is the sum of three hundred dollars in coin.

No. 18. For that certain goods, wares, and merchandise, being subject to the payment of duties by law, to wit, 344¼ thousand shingles, were, on the 28th day of July, in the year of our Lord eighteen hundred

and sixty-three, imported and brought from some foreign port or place, to wit, from New Brunswick, into the United States, to wit, into Bangor, in said district of Maine, by the said defendants and their authorized agents, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject, against the form of the statute of said United States in such case made and provided; whereby, and by force of said statute, said defendants became liable to pay the sums to which said goods, wares, and merchandise were then and there liable and subject for duties in coin, which is the sum of five hundred dollars in coin.

No. 19. For that certain goods, wares, and merchandise, being subject to the payment of duties by law, to wit, 107½ thou-
24 sand of shingles, were, on the twenty-third day of September, in the year of our Lord eighteen hundred and sixty-three, imported and brought from some foreign port or place, to wit, from New Brunswick, into the United States, to wit, into Bangor, in said district of Maine, by the said defendants and their authorized agents, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject, against the form of the statute of said United States in such case made and provided; whereby, and by force of said statute, said defendants became liable to pay the sums to which said goods, wares, and merchandise were then and there liable and subject for duties in coin, which is the sum of three hundred dollars in coin.

No. 20. For that certain goods, wares, and merchandise, being subject to the payment of duties by law, to wit, 332¼ thousand shingles, were, on the seventeenth day of October, in the year of our Lord eighteen hundred and sixty-three, imported and brought from some foreign port or place, to wit, from New Brunswick, into the United States, to wit, into Bangor, in said district of Maine, by the said defendants and their authorized agents, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject, against the form of the statute of said United States in such case made and provided; whereby, and by force of said statute, said defendants became liable to pay the sums to which said goods, wares, and merchandise were then and there liable and subject for duties in coin, which is the sum of five hundred dollars in coin.

No. 21. For that certain goods, wares, and merchandise, being subject to the payment of duties by law, to wit, 283¾ thousand of shingles, were, on the thirtieth day of October, in the year of our Lord
25 eighteen hundred and sixty-three, imported and brought from some foreign port or place, to wit, from New Brunswick, into the United States, to wit, into Bangor, in said district of Maine, by the said defendants and their authorized agents, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject, against the form of the statute of said United States in said case made and provided; whereby, and by force of said statute, said defendants became liable to pay the sums to which said goods, wares, and merchandise were then and there liable and subject for duties in coin, which is the sum of four hundred dollars in coin.

No. 22. For that certain goods, wares, and merchandise, being subject to the payment of duties by law, to wit, 170 thousand shingles, were, on the fifth day of May, in the year of our Lord eighteen hundred and sixty-four, imported and brought from some foreign port or place, to wit, from New Brunswick, into the United States, to wit, into Bangor, in said district of Maine, by the said defendants and their

authorized agents, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject, against the form of the statute of said United States in such case made and provided; whereby, and by force of said statute, said defendants became liable to pay the sums to which said goods, wares, and merchandise were then and there liable and subject for duties in coin, which is the sum of one hundred dollars in coin.

No. 23. For that certain goods, wares, and merchandise, being subject to the payment of duties by law, to wit, 100 thousand shingles, were, on the eighteenth day of August, in the year of our Lord eighteen hundred and sixty-four, imported and brought from some foreign port or place, to wit, from New Brunswick, into the United States, to
26 wit, into Bangor, in said district of Maine, by the said defendants and their authorized agents, without paying or accounting for the duty to which said goods, wares, and merchandise were then by law so subject, against the form of the statute of said United States in such case made and provided, whereby; and by force of said statute, said defendants became liable to pay the sums to which said goods, wares, and merchandise were then and there liable and subject for duties in coin, which is the sum of one hundred dollars.

Yet though requested, said defendants, or either of them, have not paid said sum, but owe and detain the same, to the damage of the said plaintiffs, as they say, the sum of fifty thousand dollars, which shall then and there be made to appear, with other due damages.

And have you there this writ, with your doings therein.

Witness Edward Fox, esq., at Portland, the second day of April, in the year of our Lord one thousand eight hundred and sixty-eight.

WILLIAM P. PREBLE, *Clerk.*

Writ amended.

This action was entered at June term, A. D. 1868, when the death of Leeman Stockwell was suggested, and said writ was amended by striking out the name of Leeman Stockwell. Said action was thence continued from term to term to this term. And now, on the sixteenth day of December, in the year of our Lord eighteen hundred and sixty-nine, the following plea was filed:

Pleadings.

And now the said defendants come, &c., when and where, &c., and for plea say that they are not indebted to the plaintiffs in the manner and form alleged against them. And of this they put themselves on the country.

By their attorney, W. C. CROSBY.

And the plaintiffs likewise.

By their attorney, GEO. F. TALBOT.

27 *Jury.*

And on the said sixteenth day of December, in the year aforesaid, a jury was duly empanelled and sworn, to wit, Lorenzo Hathaway, (who was by the court appointed as foreman,) William F. Barbour, James H. Stanton, Seward Skillinger, James L. Small, James Guptill, Charles Decker, jr., Joseph A. Kendall, Albert Young, David Frost, John W.

Caswell and Theodore L. Lassell, to whom said cause was committed, who, after a full hearing of the evidence produced, the argument of counsel thereon, and the charge of the judge, upon the twenty-seventh day of the same December, return their verdict in the words following, to wit:

Verdict.

THE UNITED STATES OF AMERICA *vs.* D. R. STOCKWELL & AL. } No. 22.

The jury find, on the first count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have therein alleged against them, and assess damages for the plaintiffs in the sum of three thousand and seventy dollars.

The jury further find, on the second count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have therein alleged against them, and assess damages for the plaintiffs in the sum of twelve hundred and fifty dollars.

The jury further find, on the third count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have therein alleged against them, and assess damages for the plaintiffs in the sum of twenty-seven hundred and fifty-six dollars.

The jury further find, on the fourth count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have
28 therein alleged against them, and assess damages for the plaintiffs in the sum of eight hundred and sixty dollars.

The jury further find, on the fifth count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have therein alleged against them, and assess damages for the plaintiffs in the sum of twenty-six hundred and fifty-eight dollars.

The jury further find, on the sixth count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have therein alleged against them, and assess damages for the plaintiffs in the sum of two hundred and thirty dollars.

The jury further find, on the eight count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have therein alleged against them, and assess damages for the plaintiffs in the sum of eight hundred dollars.

The jury further find, on the sixteenth count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have therein declared against them, and assess damages for the plaintiffs in the sum of two hundred sixty-eight dollars and sixty-two cents.

The jury further find, on the seventeenth count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have therein alleged against them, and assess damages for the plaintiffs in the sum of one hundred and nine dollars and thirty-seven cents.

The jury further find, on the eighteenth count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have therein alleged against them, and assess damages for the plaintiffs in the sum of two hundred and forty-one dollars and fifteen cents.

29 The jury further find, on the nineteenth count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have therein alleged against them, and assess damages for the plaintiffs in the sum of seventy-five dollars and twenty-five cents.

The jury further find, on the twentieth count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have therein alleged against them, and assess damages for the plaintiffs in the sum of two hundred and thirty-two dollars and forty cents.

The jury further find, on the twenty-first count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have therein alleged against them, and assess damages for the plaintiffs in the sum of twenty dollars and thirteen cents.

The jury further find, on the twenty-third count in the plaintiffs' writ, that the defendants do owe in manner and form as the plaintiffs have therein alleged against them, and assess damages for the plaintiffs in the sum of seventy dollars.

The jury further find, on the 7th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, and 22d counts in the plaintiffs' writ, that the defendants do not owe in manner and form as the plaintiffs have therein alleged against them.

LORENZO HATHAWAY, *Foreman.*

Whereupon, on this twenty-seventh day of December aforesaid, the day of finding said verdict, the following bill of exceptions was filed:

30 *Bill of exceptions.*

United States of America, Maine district, ss: District court, December term, A. D. 1869.

THE UNITED STATES OF AMERICA, PLAINTIFFS, *vs.* DAVIS R. STOCKWELL & JOHN L. CUTLER, defendants. } No. 22.—Bill of exceptions.

This was an action of debt. The plea was the general issue.

There were three sets of counts in the declaration. One set, of eight counts, was to recover double the value of eight importations of shingles, under the act of 1823, chap. 58, § 2.

Another set, of eight counts, to recover the value of the same importations under the act of 1863, chap. 76, § 1.

And a third set, of seven counts, to recover duties of 35 per cent. on the values of seven of the said eight importations.

It appeared that the firm of D. R. Stockwell & Co., of Bangor, had been for many years engaged in the lumber business, chiefly of long lumber, and partly of shingles and clapboards. The firm was composed of Davis R. Stockwell and John L. Cutler, the defendants, and one George S. Chalmers, not proceeded against. Mr. Leeman Stockwell, also of Bangor, had long been engaged in the shingle business, and had large experience, but was poor. In 1863, Mr. D. R. Stockwell proposed to the firm an arrangement to this effect, which was adopted: that the firm engage with Leeman Stockwell in the shingle business, to be done in the name of the firm of D. R. Stockwell & Co., Leeman to give it his entire and sole attention, and the firm to furnish the capital, and the profit or loss to be divided, one-half to Leeman Stockwell, and
31 the other half to the firm. The share of profit or loss coming to the firm was to be debited or credited to the firm, to be absorbed in its general business, and no separate division of the shingle business to be made. A separate account of this business was kept, and at the end of each year, 1863 and 1864, this account was closed by a division

of the profits, one-half being paid to Leeman, and the other credited to the firm.

In the years 1863–'4, Leeman was in the Aroostook County, in Maine, and on the St. John River, and at Fredericton, and St. John, engaged in the business of collecting, buying, and forwarding shingles to Bangor, on the account of this arrangement, consigned to D. R. Stockwell & Co. He employed one Thomas Dowling, at Fredericton, to assist him.

There was evidence tending to show that the shingles, for the importation of which these duties and penalties are claimed, were not of the growth and produce of the State of Maine, or of that portion of the State watered by the river St. John or its tributaries, but were the growth and produce of the province of New Brunswick. There was also evidence to rebut this, and tending to show that they were of the growth and produce of Maine, as aforesaid. There was evidence tending to show that the defendants did, in fact, know that the said shingles were of the growth and produce of New Brunswick, and there was evidence tending to show that they had no knowledge or information on the subject.

There was evidence tending to show that the said shingles were shaved, but no evidence was offered to show whether they had been also jointed, that is the sides planed so as to be parallel, but they were bought and sold as shaved shingles, and so described by the witnesses.

When these cargoes came to Bangor, in 1863 or 1864, they were reported at the custom-house, with the manifest and foreign clearances,
and with either a certificate of Dowling and of two merchants,
32 or the affidavit of Dowling, to their American origin. The collector required no duties on these cargoes, and no entries to be made, nor invoices, nor bills of lading to be produced; but the cargoes were allowed to be taken into the shed of D. R. Stockwell & Co., and there to be housed, sorted, and sold, in the usual manner of the trade. They were treated, in fact, by all parties as not being subject to duties. These shingles were openly in the possession of D. R. Stockwell & Co., sometimes lying over a season unsold, and no attempts were made by either of the defendants, or by Leeman Stockwell or Mr. Chalmers, or by any person connected with them, to conceal the shingles, or in any way to interfere with the exercise of the power of seizing them; and the revenue department did not claim duties, nor attempt to seize the shingles, and made no claim against the defendants, or any one connected with them, of any kind, until the commencement of this suit, which was April 2, 1868, when the shingles had been sold for three or four years or so.

The judge ruled that there was no evidence of an entry or attempt to enter the said shingles, and that, therefore, the verdict on the counts to recover the value of the shingles under the act of 1863 must be for the defendants.

Prayers for instructions.

As to the counts under the act of 1823, to recover double the value of the shingles, the defendants presented the following written prayers for instructions to the jury:

1. That the counts were insufficient, because they did not so describe the shingles as to show whether they were subject to duties.

2. That a civil action will not lie to recover the double value, and that the United States cannot recover both the double values and the duties under this declaration.

3. That the counts do not sufficiently aver the primary fact that the shingles were, in fact, illegally imported.

4. That the jury must be satisfied, as to each defendant, that
33 he knew that the shingles had been illegally imported, and were liable to seizure, before he received, concealed, or bought the same; and that such receiving, concealing, or buying must have been with an intent to defraud the revenues.

As to the counts to recover the duties:

1. That they were insufficient, because they do not so describe the shingles as to show that they were subject to duties.

2. That they do not show by force of what statute or by what fact or circumstance the shingles were subject to duties.

The defendants also prayed the court to rule that under the reciprocity treaty, shingles of provincial origin were not subject to duty in 1863 and 1864 in the United States, although manufactured in part, if some process of manufacture still remained to be performed, to make them completely manufactured; as, if they were shaved smooth and to an edge, but were not jointed, that is, the sides were not planed or otherwise made straight and parallel.

Rulings of the court.

These requests were read to the court before the charge, and the court thereupon ruled that the counts in the writ were sufficient in form. As to the other requests, the judge stated that he had reduced to writing his instructions, which would be given to the jury, and at the close of the charge, the requests could be renewed, if more specific instructions than had been contained in the charge were desired by the defence, and he did not instruct the jury in the terms of any of the prayers.

As to the reciprocity treaty the judge ruled as follows:

By the 3d article of the reciprocity treaty with Great Britain of 1854, it was stipulated that "timber and lumber of all kinds, round, hewed, and sawed, unmanufactured in whole or in part," the growth and produce of New Brunswick, should be admitted into this country free of duty.

If the lumber or timber was round, hewed, or sawed, and
34 thereby was unmanufactured, in whole or in part, it was to be free of duty, but if it was manufactured otherwise, by other process, as for instance, if made into shaved shingles, such articles would not be free of duty if the growth and produce of New Brunswick, but would be subject to such duty as Congress should impose on articles of that description, which it is not denied was thirty-five per cent. ad valorem at the time of these importations.

If the jury were satisfied that the shingles which are the subject-matter of controversy were shaved shingles, the growth and produce of New Brunswick, then the description in the counts as "shingles subject to duty" is sufficient. If the facts set forth in the counts are proved, the allegations are sufficient.

As to any shingles having been, in fact, illegally imported, and as to the knowledge of the defendants that the shingles had been illegally imported and were liable to seizure, his honor ruled as follows:

Taking the arrangement between D. R. Stockwell & Co. and Leeman Stockwell to have been as described above, I instruct you, that if Lee-

man Stockwell, in the conduct and management of the shingle business so entrusted to him, and in the course of the business and for the common and joint benefit of himself and D. R. Stockwell & Co., went into New Brunswick and there knowingly purchased and received on their joint account shaved shingles, the growth and produce of New Brunswick, and afterwards he, by himself or his agents McLane & Dowling, knowingly sent such shingles to his copartners D. R. Stockwell & Co., at Bangor, fraudulently documenting them as the growth and produce of Maine, so that thereby, in the regular course of the business, they should be and were admitted and received into the country by the defendants as the growth of Maine, the shingles so imported were illegally imported and liable to seizure, and these defendants, being then his partners, are in this action chargeable with and bound by
35 this knowledge of Leeman Stockwell, if such was his knowledge, viz: that the shingles were the growth and produce of New Brunswick, liable to duty and seizure, being illegally imported. This being a civil action and not a criminal prosecution, the knowledge of one of the firm on these matters, in this suit, is to be deemed the knowledge of the defendants, his copartners in the shingle business.

If Leeman Stockwell, as a member of the firm engaged in the shingle business, at the time of the importations and reception of the shingles at Bangor, knew that they were province shingles liable to duty and seizure and illegally imported, it is not necessary for the Government to prove that the defendants personally had actual knowledge of these facts, which were then within the knowledge of their partner, Leeman Stockwell.

As to the allegation that the defendants knowingly did receive, conceal, and buy the shingles, his honor ruled that:

If with this knowledge as before stated, on Leeman's part, that the shingles were illegally imported and liable to seizure, D. R. Stockwell & Co., in the usual course of the business, received the shingles at Bangor, and they were disposed of by them, and the profits of the business divided as stated above, the jury are authorized to find that the defendants, being Leeman's partners, received the shingles, knowing the same were illegally imported and liable to seizure.

His honor further ruled that a civil action would lie for the double values under the act of 1823, and that the plaintiffs could recover under this declaration both the duties upon the shingles and double their value. Upon the completion of the charge, the counsel for defendants were inquired of by the court whether they desired any more specific instructions on their requests, to which they replied they believed not, as they considered them to have been all refused.

When the charge to the jury was completed, the defendants' exceptions to the refusal of the court to give the instructions requested
36 by them, and to the instructions given to the jury as above stated, were duly reserved to the defendants.

Before the trial, the U. S. attorney obtained a commission addressed to a judge in New Brunswick, requesting him to take the deposition of Thomas Dowling, in this case, on the ground that Dowling was not subject to process, being a resident of New Brunswick, and that he would not attend voluntarily. The said attorney filed interrogatories, to which the defendants filed cross-interrogatories. The directions for the execution of the commission were as follows:

Commission to take deposition.

UNITED STATES OF AMERICA, *Maine District, ss:*

[L. S.] The district court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of November, in the year of our Lord one thousand eight hundred and sixty-nine:

To Hon. James Steadman, of Frederickton, in the province of New Brunswick, judge of the county court for the county of York:

Know ye that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Thomas Dowling, of said Frederickton, to be used in a certain case now pending in said court, wherein The United States are plaintiffs, and Davis R. Stockwell & al. are defendants. Writ No. 214.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness while present before you to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to
37 writing, and to be subscribed by each of said witnesses in your presence. And the same so taken and subscribed to return, together with this commission and your doings herein enclosed, sealed, and directed to the district court aforesaid, next to be holden at Portland, on the seventh day of December next.

In testimony whereof we have caused the seal of the said district court to be hereunto affixed.

Witness the honorable Edward Fox, at Portland, this first day of November, in the year of our Lord one thousand eight hundred and sixty-nine.

WILLIAM P. PREBLE, *Clerk.*

N. B.—You shall not, except by the consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself or by any attorney or agent, nor to communicate, by interrogatories or suggestions, with the deponents whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponents in their order, and take the answer of the deponents to each fully and clearly.

The return made by the magistrate was as follows:

Execution of commission.

In the district court of the United States of America for the Maine district.

In a certain cause wherein The United States of America are plaintiffs, and Davis R. Stockwell et al. are defendants. Writ No. 213.

I hereby certify that under and by virtue of the commission issued

by the district court of the United States of America for the Maine district in the above-named cause, on the first day of November, in
38 the year of our Lord one thousand eight hundred and sixty-nine, for the examination, upon interrogatories and cross-interrogatories, of Thomas Dowling, of Fredericktou, province of New Brunswick, a witness on behalf of the plaintiffs, an examination on oath of the said Thomas Dowling was had and taken before me at Frederickton, in the province of New Brunswick, on the nineteenth day of November, A. D. 1869, and the following are the answers of the said Thomas Dowling given to the several interrogatories and cross-interrogatories thereto annexed.

And I hereby certify that the bills of lading hereto annexed, Nos. 1 to 8, and marked C———, are the bills of lading produced by the witness as the bills of lading referred to in his answer to the fifteenth interrogatory, and that the letters hereto annexed, numbering from 1 to 19, are the letters produced by the witness as the letters referred to in his answer to the fourth interrogatory, marked A. And I further certify that the book accompanying this deposition, marked B, and bearing thereon my certificate and signature, is the book produced by the witness as the invoice-book referred to in his answer to the twelfth interrogatory; and that the signatures, Thomas Dowling, affixed to this deposition are in his handwriting and made in my presence.

Given under my hand this nineteenth day of November, A. D. 1869.

JAMES STEADMAN,
Judge of the County Court for the County of York.

Objections to deposition.

The defendants objected that the return did not show due execution of the commission, as it did not appear that the magistrate himself examined the witness, or that he reduced or caused to be reduced to writing the deponent's answers, or that he reduced them or caused them to be reduced to writing in his own presence. These objections were overruled, and the deposition admitted, the objections of the defendants saved.

39 In March, 1868, the court issued a search warrant, of which the following is a copy, and the marshal made the following return, which is conceded to be true:

Search warrant.

UNITED STATES OF AMERICA, *District of Maine:*

The President of the United States of America to the marshal of the district of Maine, and either of his deputies, greeting:

Whereas it has been made to appear to the satisfaction of the subscriber, district judge of the United States within and for the district of Maine, by affidavits of Henry C. McCoy, that frauds on the revenue have been attempted and committed from the first day of June, A. D. 1863, to the 18th day of June, A. D. 1866, by Davis R. Stockwell, John L. Cutler and Leeman Stockwell, of the firm of D. R. Stockwell & Co., of Bangor, by their being engaged and interested in the importation into the port and collection district of Bangor and other ports in the district of Maine, of merchandise, viz, 4,700,000 shingles, the growth and manufacture of the British province of New Brunswick, subject by law to duty, and upon which merchandise the duties required by law have

not been paid; and that day-books, journals, ledgers, cash-books invoice-books, shingle and lumber books, together with the invoices bills, business letters, and letter-books of said D. R. Stockwell & Co. relating to such merchandise and frauds are deposited in the store and counting-room of said D. R. Stockwell & Co., viz, at No. 16 Exchange street, in said Bangor:

We command you, therefore, that immediately you enter the store and counting-room of said D. R. Stockwell & Co., in No. 16 Exchange st., in Bangor, in said district of Maine, in the day time only, there to
40 search for such day-books, journals, ledgers, cash-books, invoice-books, shingle and lumber books, together with the invoices, bills, business letters, and letter-books of said D. R. Stockwell & Co., and relating to such merchandise and frauds; and if found, to take and carry away the said books and papers, and bring them before me, to be inspected and retained according to law. And this shall be your warrant for so doing.

Witness my hand and seal, at Portland, this 30th day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

[L. S.] EDWARD FOX,
District Judge of Maine.

Return on warrant.

MARCH 31ST, A. D. 1860.

DISTRICT OF MAINE, *ss:*

In obedience to the within precept, I this day entered the counting-room of D. R. Stockwell & Co., No. 16 Exchange street in Bangor, in said district, in the daytime, and there found, took, and carried away the following books and papers, viz: 1 shingle ledger, 3 letter-books from Sept. 12, '62, to Oct. 4, '66; also a lot of letters, '63 to '66, and have brought them before the district judge as therein directed.

Fees:

Service	$2 00
Travel 140 miles	8 40
Transp. of books	1 00
	$11 40

CHARLES CLARK,
U. S. Marshal District of Maine.

Objections to warrant, &c.

The United States attorney offered in proof against the defendants, account-books, letters, copies of letters, and other documents so seized and placed in his custody by the court. The defendants objected that the court was not authorized to issue, nor the marshal to execute, the warrant in question, and that the United States attorney could not, against the consent of the defendants, put in evidence against
41 them papers from his own possession, obtained and placed there by force of the warrant. The objection was overruled and the papers admitted as against these objections, the exceptions of the defendants being saved.

The verdict was for the plaintiffs on the counts for the duties and the double values, and for the defendants on the counts under the act of 1863.

And inasmuch as the matters referred to, and the instructions of this honorable court so objected to, as well as the instructions prayed for and refused, do not appear by the record and verdict aforesaid, the counsel, on the part of the defendants, prayed the honorable court to set their seal to this bill of exceptions, containing the several matters proved and given in evidence, and the rulings, rejections, and directions of his honor the judge thereupon, and the exceptions thereto; all which being found to be true are allowed.

Signed and sealed as of the 27th day of December, A. D. 1869, on which the verdict in this case was rendered.

[L. S.] EDWARD FOX,
Judge of the District Court.

Whereupon the district attorney moved for judgment upon the verdict, and that the same be entered for damages and costs.

Entry of judgment.

And now, on this thirty-first day of January, A. D. 1870, being the thirty-seventh day of the term of the court, it is ordered that judgment be entered on the verdict, and that the plaintiffs have and recover of said Davis R. Stockwell and John L. Cutler, surviving partners of the firm of D. R. Stockwell & Co., their damages as follows, viz:

Upon the first count, the sum of three thousand and seventy dollars.

Upon the second count, the sum of one thousand two hundred and fifty dollars.

42 Upon the third count, the sum of two thousand seven hundred and fifty-six dollars.

Upon the fourth count, the sum of eight hundred and sixty dollars.

Upon the fifth count, the sum of two thousand six hundred and fifty-eight dollars.

Upon the sixth count, the sum of two hundred and thirty dollars.

Upon the eighth count, the sum of eight hundred dollars.

As found by the verdict of the jury, amounting in the aggregate to the sum of eleven thousand six hundred and twenty-four dollars.

And that said plaintiffs have and recover of said Davis R. Stockwell and John L. Cutter, as damages:

Upon the sixteenth count, the sum of two hundred and sixty-eight dollars and sixty-two cents.

Upon the seventeenth count, the sum of one hundred and nine dollars and thirty-seven cents.

Upon the eighteenth count, the sum of two hundred and forty-one dollars and fifteen cents.

Upon the nineteenth count, the sum of seventy-five dollars and twenty-five cents.

Upon the twentieth count, the sum of two hundred and thirty-two dollars and forty cents.

Upon the twenty-first count, the sum of twenty dollars and thirteen cents.

Upon the twenty-third count, the sum of seventy dollars.

As found by the verdict of the jury, amounting in the aggregate to the sum of one thousand and sixteen dollars and ninety-two cents, which amount of one thousand and sixteen dollars and ninety-two cents, is recovered for duties upon imports, and is payable in coin by law receivable for duties.

43 And, also, it is further ordered that said plaintiffs have and re-

cover of said defendants their costs of suit, taxed at six hundred dollars and sixty-three cents.

And that judgment be entered for defendants upon the seventh, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, and twenty second counts.

Attest: WILLIAM P. PREBLE, *Clerk.*

Recorded from the original papers and minutes.

Attest: WILLIAM P. PREBLE, *Clerk.*

Authentication of record of dist. court.

UNITED STATES OF AMERICA, *Maine, ss:*

I, William P. Preble, clerk of the district court of the United States for Maine district, do hereby certify that the foregoing is a true and perfect copy of the record and of all proceedings in cause of United States of America, plaintiffs, vs. Davis R. Stockwell & al., defendants, determined in said court at the December term, A. D. 1869, thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said district court this seventh day of February, A. D. 1870.

[L. S.] WILLIAM P. PREBLE, *Clerk.*

44 This action was entered in this court at April term, in the year of our Lord one thousand eight hundred and seventy, and said Davis R. Stockwell and John L. Cutler being present by W. C. Crosby and Richard H. Dana, jr., their attorneys, and the said United States by Nathan Webb, attorney of the United States for the district of Maine, the same came on for trial and was argued by counsel. All which being seen and understood, it does not appear to the court here that error does exist in the record of the judgment aforesaid, or that the same should be reversed as alleged by said complainants, but that the same should be affirmed.

It is therefore considered by the court here, to wit, on this
45 thirtieth day of August, in the year of our Lord one thousand eight hundred and seventy, that the said judgment of the said district court be, and the same is hereby, affirmed; that the said United States recover against the said Davis R. Stockwell and John L. Cutler the sum of eleven thousand six hundred and twenty-four dollars mentioned in said judgment, with accruing interest at six per centum from the thirty-first day of January, in the year eighteen hundred and seventy, and the further sum of one thousand and sixteen dollars and ninety-two cents therein mentioned, which is "recovered for duties upon imports, and is payable in coin by law receivable for duties," with accruing interest at six per centum from said thirty-first day
46 of January, payable in coin, and costs of suit taxed by said district court at six hundred dollars and sixty-three cents, with interest from the time and at the rate aforesaid, and the further sum of fifteen dollars costs of suit in this court.

Recorded from the original papers and minutes.

Attest: GEO. F. EMERY, *Clerk.*

Authentication of record.

UNITED STATES OF AMERICA, *Maine District, ss:*

I, Geo. F. Emery, clerk of the circuit court of the United States for

Maine district, hereby certify that the foregoing is a true copy of the record and of the proceedings in the cause of Davis R. Stockwell & al., plaintiffs in error, against The United States of America, defendants in error, determined in said circuit court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this first day of September, A. D. 1870.

[SEAL.] GEO. F. EMERY, *Clerk.*

47 *Bond.*

Know all men by these presents that we, Davis R. Stockwell and John L. Cutler, both of Bangor, in the district of Maine, as principals, and George S. Chalmers, F. Garland, Lysander Strickland, and J. O. B. Darling, all of Bangor, aforesaid, as sureties, are holden and stand firmly bound and obliged unto The United States of America in the sum of thirty thousand dollars, to be paid to The United States of America; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, dated this first day of September, A. D. 1870.

The condition of the above obligation is such, that whereas the said Davis R. Stockwell and John L. Cutler have prosecuted a writ
48 of error to the Supreme Court of the United States, returnable on the first Monday of December next, to reverse the judgment rendered against them on the thirtieth day of August last past, in an action of debt in behalf of the said United States, originally tried and determined in the district court of the United States for said Maine district, and thence brought by writ of error by them, said Davis R. Stockwell and John L. Cutler, and entered and determined in our said circuit court:

Now, therefore, if the said Davis R. Stockwell and John L. Cutler shall prosecute their said writ of error to the said Supreme Court with effect, and answer all damages and costs if they shall fail to make their plea good, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

Signed, sealed, & delivered in presence of—

WM R. AYER, *to*	DAVIS R. STOCKWELL.	[L. S.]
49 W. C. CROSBY *to J. L. Cutler.*		
	JOHN L. CUTLER.	[L. S.]
J. C. CARPENTER.	GEO. S CHALMERS.	[L. S.]
J. C. CARPENTER.	F. GARLAND,	[L. S.]
W. C. CROSBY *to L. S.*	LYSANDER STRICKLAND.	[L. S.]
W. C. CROSBY *to J. O. B. D.*		
	J. O. B. DARLING.	[L. S.]

OFFICE OF THE CLERK, C. C. U. S.,
September 1, 1870.

MAINE DISTRICT, *ss:*

Received & filed.

[SEAL.] Attest: GEO. F. EMERY, *Clerk.*

I, Geo. F. Emery, clerk of the circuit court of the United States for the district of Maine, specially authorized by order of court in this behalf, do hereby approve of the within bond.

Sep. 1, 1870.

GEO F. EMERY, *Clerk.*

A true copy of the original on file.

Attest: GEO. F. EMERY, *Clerk.*

50 *Citation.*

UNITED STATES OF AMERICA, *District of Maine, ss:*

[SEAL.] The President of the United States of America to the marshal of the district of Maine or his deputy, greeting:

Whereas in the record and in the judgment of a suit which was determined in our circuit court of the United States for the first circuit, holden at Portland, within and for the district of Maine, on the twenty-third day of April, in the year of our Lord one thousand eight hundred and seventy, in which suit Davis R. Stockwell and John L. Cutler, both of Bangor, in said district, were plaintiffs in error, and The United States of America were defendants in error, manifest error it is
51 said hath intervened, to the great damage of the said Davis R. Stockwell and John L. Cutler, as by their complaint we perceive, which record and judgment we for certain reasons have caused to be brought before our Supreme Court of the United States next to be holden at Washington, in the District of Columbia, on the first Monday of December next, in order that the error therein, if any there be, may be duly corrected:

We command you, therefore, that you make known to Nathan Webb, esquire, district attorney of the United States for our said district of Maine, that he be before our said Supreme Court to be holden as aforesaid, to hear the record and judgment aforesaid, if he shall see cause, and to do and receive in behalf of the said United States what-
52 ever the same court shall consider thereupon.

Given under the hand of our judge of our circuit court of the United States for the first circuit this first day of September, in the year of our Lord one thousand eight hundred and seventy.

GEORGE F. SHEPLEY,
U. S. Circuit Judge First Judicial Circuit.

SEPTEMBER 9, 1870.

DISTRICT OF MAINE, *ss:*

I have this day served the within citation by delivering to the within-named Nathan Webb, district attorney, a true and attested copy thereof in hand.

S. S. MARBLE,
U. S. Marshal Dist. of Maine.

(Indorsement on cover:) No. 271. Davis R. Stockwell & John L. Cutler, plaintiffs in error, vs. The United States. Maine C. C. U. S. Filed 28th October, 1870.

REC. 271—3

Supreme Court of the United States.

D. R. STOCKWELL ET AL., IN ERROR,

vs.

UNITED STATES.

R H Dana

BRIEF OF PLAINTIFFS IN ERROR.

BOSTON:
ALFRED MUDGE & SON, LAW PRINTERS, 34 SCHOOL STREET.
1871.

Supreme Court of the United States.

DAVIS R. STOCKWELL ET AL., IN ERROR, *v.* UNITED STATES.

BRIEF OF PLAINTIFFS IN ERROR.

ABSTRACT OF THE CASE.

ACTION of debt by the United States *v.* D. R. Stockwell and John L. Cutter. Plea, the general issue.

The declaration contained three sets of counts. One set of counts, under the act of 1863, was abandoned. Another set of counts was to recover the *duties* on the importations. On these counts, the verdict is for the United States, and no error is now assigned relating to these counts. The remaining set of counts was to recover double the value of the goods received by the defendants, under section 2 of the statute of 1823, chapter 58. (3 Stat. 781.)

The section is as follows: —

"If any person or persons shall receive, conceal, or buy any goods, wares, or merchandize, knowing them to have been illegally imported into the United States, and liable to seizure by virtue of any act in relation to the revenue, such person or persons shall, on conviction thereof, forfeit and pay a sum double the amount or value of the goods, wares, or merchandise so received, concealed, or purchased."

The defendants, residents of Bangor, Maine, had long been engaged in the lumber business there, chiefly of long lumber, partly of shingles and clapboards. They were partners under the firm of D. R. Stockwell & Company. A third partner, one Chalmers, was not proceeded against. In 1863, the firm made an arrangement with one Leeman Stockwell, to go to Aroostook County in Maine, Fredericton and St. John in New Brunswick, and there collect, buy and forward shingles,

to be consigned to the firm at Bangor. It is conceded for the purposes of this writ of error, that the division of profit and loss between the firm and their agent was such as to make them partners with him in the shingle business done under this arrangement, but not in their general business.

No question will be made under this writ of error that the shingles, for the double value of which this suit was brought, were subject to duties if they were of Provincial growth.

Leeman Stockwell purchased shingles and shipped them from St. John to Bangor, consigned to the firm.

When these cargoes came to Bangor in 1863, or 1864, the defendants reported them at the Custom-house, with the manifest and foreign clearances and certificates of their American origin. The collector considered them as not subject to duties, and required no entries to be made nor invoices nor bills of lading to be produced. He allowed the cargoes to be taken into the sheds of Stockwell & Company, and there to be housed, sorted, and sold in the usual manner of trade. They were treated, in fact, by all parties, as not subject to duties. They were openly in the possession of Stockwell & Company, sometimes lying over a season unsold, and no attempts were made to conceal them, or in any way to interfere with any rights the government might have to seize them, or otherwise. By the end of 1865, they had all been sold in the usual course of trade, and no attempt was made by the government to seize them, and no notice given to the defendants that the government had changed its mind on the subject of their being liable to duties, until the commencement of this suit, which was April 2, 1868.

At the trial, there was evidence tending to show that certain of these shingles were of Provincial growth, and evidence tending to show that they were of the growth of the State of Maine. There was evidence tending to show that Leeman Stockwell knew such shingles to be of Provincial origin, and that he exported them from St. John, knowing them to be subject to duties, and liable to seizure if the duties were not paid, and consigned them to the firm, documented as of the growth of Maine, with the intent that they should be, and in order that they might be, imported as free of duty. And there was evidence to rebut this.

There was evidence tending to show that the defendants, at the time they received these shingles, did in fact know that they were of Provin-

cial growth; and there was evidence tending to show that they had not knowledge or information on the subject.

As it was not contended that the defendants *concealed* the shingles and as they did not *buy* them after their importation, the only act relied upon by the government was that they "received" the shingles with knowledge, &c.

PRAYERS FOR INSTRUCTIONS.

The prayers, for the refusal of which error is now assigned, are the following:— (Record, p. 16.)

1. That a civil action will not lie to recover the double value.

2. That the jury must be satisfied, as to each defendant, that he knew that the shingles had been illegally imported and were liable to seizure, before he received the same.

RULINGS OF THE COURT.

(Record, pp. 17–18.) I. The presiding judge ruled that a civil action would lie for the double values under the act of 1823.

II. The presiding judge instructed the jury, that 'if Leeman Stockwell, in the conduct and management of the shingle business so entrusted to him, and in the course of the business and for the common and joint benefit of himself and D. R. Stockwell & Co., went into New Brunswick, and there knowingly purchased and received on their joint account, shaved shingles, the growth and produce of New Brunswick. and afterwards, he, by himself or his agents McLane & Dowling, knowingly sent such shingles to his copartners D. R. Stockwell & Co., at Bangor, fraudulently documenting them as of the growth of Maine, so that thereby in the regular course of business they should be and were admitted and received into the country by the defendants as the growth of Maine, the shingles so imported were illegally imported and liable to seizure; and these defendants, being then his partners, are in this action chargeable with and bound by this knowledge of Leeman Stockwell, if such was his knowledge, viz.: that the shingles were the growth of New Brunswick, liable to duty and seizure, being illegally imported. This being a civil action and not a criminal prosecution, the knowledge

of one of the firm on these matters in this suit is to be deemed the knowledge of the defendants, his copartners in the shingle business."

"If Leeman Stockwell, at the time of the importation and reception of the shingles at Bangor, knew that they were Province shingles, liable to duty and seizure, etc., it was not necessary for the government to prove that the defendants personally had actual knowledge of these facts, which were then within the knowledge of their partner, Leeman Stockwell."

STATEMENT OF ERRORS RELIED UPON.

FIRST. — Error, that civil action of debt will lie for the United States under this statute.

SECOND. — Ruling of the judge as above set forth (reported at large, record, p. 17–18), that the knowledge by the defendants, required by the statute, was conclusively presumed from the knowledge of their agent, being their partner in the transaction.

THIRD. — Sec. 2 of Act 1823, cannot be applied to the importers themselves.

FOURTH. — The penalty under this section is repealed by Act 1866, ch. 201, sec. 4 (14 Stat. 179).

FIRST.

A CIVIL ACTION OF DEBT WILL NOT LIE IN THIS CASE IN THE NAME OF THE UNITED STATES.

It is not doubted that debt in the name of the United States will lie to recover duties, if the defendant be the owner and importer; for it has been held that by the act of importing, on the part of an owner, an obligation to pay the duties is contracted.

United States *v.* Lyman, 1 Mason, 482.

It is not doubted that where a statute gives the right to a private person to recover a penalty in a sum certain or ascertainable, he may maintain debt; for he cannot maintain an information.

Parsons *v.* Hunter, 2 Sumner, 419.

Levey *v.* Burley, 2 ib. 361.

But where the proceeding is by the sovereign, and for a penalty based on an offence, it must be by indictment or by information of debt.

This statute (1823, ch. 58), evidently looks to proceedings criminal, or at least prerogative, in their nature.

(1.) Section 2 makes the penalty depend "on conviction thereof."

(2.) It requires *knowledge* on the part of the offender.

(3.) The offence and penalty are not based on the illegal importation, but on the knowingly concealing, &c., goods illegally imported. The penalty is the double value, not of the importation, but of the goods concealed.

The provisions of section 5, that the penalties and forfeitures "shall be sued for and recovered" in the manner prescribed by the act of 1799, ch. 22, sec. 89, does not necessarily give a civil action of debt. The words "sued for," "recovered," will embrace the information of debt and even an indictment for a penalty.

Act 1808, ch. 8, sec. 6 (2 Stat. 454).
Walsh *v.* United States, 3 W. & M. 345.

The Court will not presume that the legislature intended to subject persons to a civil action instead of an information, unless on clear terms in a statute. An information of debt, and even an indictment, if it be only to recover a penalty, or forfeiture under revenue laws, does not imply disgrace or ignominy, and the defendant has a greater protection in respect of the burden of proof and the quantum of proof, and the course of the trial. The statute of limitation, also, may be more favorable to the defendant, in proceedings by indictment or injunction.

Act 1790, ch. —, sec. 32 (1 Stat. 119).

The difference becomes material in this case; for the judge ruled that by reason of this being a civil action, the defendants were bound by an artificial presumption of knowledge from the knowledge of their partner, which they would not have been in a proceeding of a different character. (Record, p. 18.)

The cases in the circuit and district courts where debt for a penalty has been brought, have been suits by private persons; or, if in the name

of the United States, where the statute has given that action in terms or by necessary implication.

It is not known that there is any case except that relied upon by the government (United States *v.* Andrews, not reported), in which the objection has been made and argued and directly passed upon, in case of a statute at all like that under consideration.

SECOND.

Error in the ruling, that in a proceeding under the act of 1823, *the knowledge required of the defendants was conclusively presumed from the knowledge possessed by their agent, being their partner in the transaction, — or, in the words of the judge, —*

"If Leeman Stockwell, as a member of the firm engaged in the shingle business, at the time of the importations and reception of the shingles at Bangor, knew that they were Province shingles liable to duty and seizure, and illegally imported, it is not necessary for the government to prove that the defendants personally had actual knowledge of these facts, which were then within the knowledge of their partner, Leeman Stockwell."

I. The statute is entirely *punitive.* The loss the government sustains, and its civil claim are for the *duties.* These they have recovered in this suit, of these defendants, and no error is assigned to defeat that claim.

The utmost loss the government could sustain by the concealing of the goods liable to seizure, would be the value of the goods so concealed. The penalty inflicted by the statute is arbitrary and absolute, and has no reference to indemnification.

The penalty is calculated upon the illegal act, and is double the value of the goods received or concealed, without reference to the duties or the value of the consignment. It is in fact purely a *punishment* for the illegal act of receiving and concealing smuggled goods.

The statute requires the existence of four things: *First,* an illegal importation by some person; *Second,* that the goods be subject to seizure; *Third,* a knowledge by the defendants of both these facts; and, *Fourth,* a receiving, concealing or buying of these goods by the defendants

after importation, and after they have become subject to seizure. The *scienter* is the *sine qua non* of the offence. All persons are liable to buy smuggled goods subject to seizure. As simply *buying* these goods is made a sufficient *act*, the offence depends on the *scienter*.

This suit is not upon a partnership liability. The defendants could not have pleaded the nonjoinder of Chalmers in abatement. (Record, p. 15.) Each defendant was liable for his own act, and, although partners, the verdict might be against one, and in favor of the other. The error of the district judge, as will be seen more fully below, was in applying to this punitive proceeding against individuals, certain rules applicable only to claims for indemnification, or actual damages against a partnership.

If the ruling had been that the fact that Leeman Stockwell was agent and partner should be weighed by the jury as a circumstance tending to show knowledge on the part of the defendants, no error could have been assigned. If, from that fact alone, the jury had found knowledge in the defendants, the only question would have been whether the verdict was against the weight of evidence. This would have addressed itself to the discretion of the Court on a motion for a new trial, and would not have presented a question of law.

II. The instructions do not make a proper distinction as to the character of the acts.

If an agent or partner, in the course of his employment, *wilfully* does an act *in violation of law*, the principal or partner is not liable, except upon evidence that he authorized or adopted it. In the absence of proof as to actual authorization, or in determining whether he impliedly authorized it, the nature of the employment and of the act must be compared, and the instructions should refer to the consideration whether the illegal act was one the doing of which may be fairly held to have been authorized from the nature of the employment, &c., &c. An absolute instruction, as this substantially was, — that from the fact of an authority to buy and ship goods, an illegal act of shipping goods by a fraudulent invoice or description was in law the act of the partnership, and not open to rebuttal, would be incorrect.

Story's Agency, § 456.
McManus v. *Crickett*, 1 East. 106.

III. Such ruling would deprive the defendants of the benefit of the presumption that no one does an act prohibited by law. This presumption applies, of course, to the authorizing of an illegal act by another It is, doubtless, a rebuttable presumption, and cannot overweigh facts and is to be balanced with other presumptions; but the defendants should have the benefit of it in the scales.

Bennett v. *Clough*, 1 B. & Ald. 461.
Sissons v. *Dixon*, 5 B. & Cr. 758; S. C. 8 D. & R. 576, 9.
Wilson v. *Rankin*, 6 Best & Sm. 208.
Peachey v. *Rowland*, 13 C. B. 182.
Lyons v. *Martin*, 8 Ad. & E. 512.
Freeman v. *Rosher*, 13 Q. B. 780.
Earl v. *Rowcroft*, 8 East. 126, 133.
Best on Presumptions [64–68].
Taylor on Evidence, 116.

IV. The instructions were erroneous in other respects. They require the jury to find that the defendants knew of the illegal importations from the mere fact of a knowledge of their partner in a foreign country, without submitting to the jury the question whether the defendants authorized the act of their agent and partner, or did in fact know of it.

Even if the general proposition respecting liability for the act of an agent and partner is sound, in certain civil suits to recover damages for a loss sustained by an agent's or partner's unauthorized act, yet, when the suit is for a penalty, and the statute in terms requires that the defendant shall "know," &c. and the *scienter* is alleged in the declaration, it must be proved. The instructions should have been as to what acts of the defendants were *sufficient proof of knowledge by them*, or as to *presumptions of knowledge by principals and partners*. They seek to take the fact of *knowledge* by the defendants from the jury, and to direct a verdict on the act of Leeman Stockwell alone.

It is needless to cite authorities to the point that where a penal statute requires *scienter*, and the *scienter* is alleged, it must be proved and found; and that an instruction that the jury can ignore the allegation of knowledge, and find a verdict on the legal *liability* for an agent or part-

ner's act, without knowledge, either actual or the result of presumptions left to the jury, is necessarily insufficient.

V. In all cases where knowledge is required by statute, the question of knowledge is left to the jury, with instructions as to presumptions and *prima facie* proof, &c., if required; but, on balancing the presumptions arising on each side, and the facts proved, the jury must be satisfied of the knowledge. A careful examination of the cases will show that such is always the course taken whenever a principal or partner is charged for a penalty, or even to make good a loss, by reason of an act of an agent or partner, if knowledge on his part is an ingredient.

Regina v. *Dean*, 12 M. & W. 39.
Cooper v. *Slade*, 6 Ho. of Lords Cases, 749.
Regina v. *Bradley*, 10 Mod. 155.
Rex v. *Dixon*, 3 M. & S. 11.
Rex v. *Manning*, Com. R. 616.
Atty. Gen. v. *Riddle*, 2 Cr. & J. 493.
Atty. Gen. v. *Siddon*, 1 Cr. & J. 220.
United States v. *Halberstadt*, Gilpin, 262.
Graham v. *Pocock*, L. R. 3 Pr. C. 345.

So in civil suits where knowledge is required.

Lewis v. *Reed*, 13 M. & Welsb. 834.
Castle v. *Bullard*, 23 How. 172.

VI. The instructions are liable to this further objection.

Assuming them to state the law correctly, that a principal or partnership may be liable for a tort of an agent or copratner, done without their knowledge and authority, in suits brought to recover compensation or indemnification for a loss suffered by a third person through the misconduct of an agent or partner, — the same rule does not apply in the case of a suit to recover a penalty.

These counts are for a statute penalty or forfeiture, and not for indemnity for a loss or injury. The statute is not remedial, but in the highest sense punitive. The penalty due is not for the importation, but for a subsequent act of concealing or knowingly receiving.

The cases in which a principal or partnership is held responsible for an illegal act of an agent or copartner which they have not authorized

or adopted, are all actions brought to enforce contracts, or to recover compensation for a loss. In such cases, the measure and limit of responsibility is the direct loss suffered, or the consideration or benefit received.

They rest on the maxim that when a specific loss must fall on one of two innocent persons, it should rather be borne by the person who has enabled the third person to do the act, or been its occasion.

United States v. *Halberstadt*, Gilpin, 262.
Smith's Leading Cases (Hare and Wallace), Vol. 1, p. 329, 330.
Collyer on Partnr. § 454.
Story's Agency, §§ 453, 443, 470, 17, 18, 72, 126, 131–3, 227, 8.
Graham v. *Pocock*, Law Report, 3 Pr. C. Cases, 345.
Udell v. *Atherton*, 7 Hurl. and N. 171.
Freeman v. *Rosher*, 13 Q. B. 780.
Castle v. *Bullard*, 23 How. 172.
Stone v. *Marsh* (Colly on Partner. 406).
Locke v. *Stearns*, 1 Met. 560.
Hearne v. *Garton*, 2 El. and E. 65.
Turner v. *N. B. R. R.*, 34 Calif.
Hutchins v. *Turner*, 8 Humphreys, 415.
Herne v. *Nichols*, 1 Salkeld, 289.

It is for this reason that the principal is not liable in *trespass*, but in *case*, where he has not in fact authorized the act, or adopted it with actual knowledge.

Freeman v. *Rosher*, 13 Q. B. 780.
Story's Agency, § 453.
Morley v. *Gaisford*, 2 H. Bl. 442.
McManus v. *Crickett*, 1 East. 106.
Gordon v. *Rolt*, 4 Exch. 365, 7 D. and L. 87.
Sharod v. *L. & N. W. R. R.* 4 Exch. 580; 7 D. and L. 213.

VII. It has been said by text writers, in general terms, that a principal may be held responsible for the illegal or tortious act of his agent, even penally and criminally. (In respect to this rule, the liability for the act of a copartner rests on the same principle and reasons with that of a principal for the act of an agent.)

It is true, as a general observation, that *he may be.* But certain distinctions and reasons are always to be borne in mind.

(*a.*) If the principal or partner authorized the act, it is his act, and he may be liable *criminaliter* as well as *civiliter.*

Regina v. *Dixon*, 3 M. & S. 11.
Commonwealth v. *Nichols*, 10 Met. 259.
Commonwealth v. *Putnam*, 4 Gray, 16.
State v. *Neal*, 7 Foster, 131.

(*b.*) If he adopts the act with guilty knowledge, the result is the same.

(*c.*) If the principal or partner neither authorized the act, nor intentionally adopted it at the time, yet he must not take advantage of it. Accordingly, if, without knowledge of the fraud, he sues to enforce a contract procured by the fraud of his agent or partner, the fraud is a good defence. If he perseveres in the suit, he is taking advantage of the fraud to the injury of another.

(*d.*) If he has received the benefit of his agent's or partner's fraud, though ignorantly, he must not retain it. Accordingly, if he is sued in replevin or trover for goods he has received through his agent's or partner's fraud, it is immaterial whether he authorized it, or merely adopted it, or even whether it was done within the limits of the employment, or whether the act of the agent or partner was a crime, or only a tort; the reason is, that he must not retain the benefit, to the injury of another. In such cases no title, in fact, passes to the principal or partnership. The same rule applies in suits for money had and received, and in all cases in equity where the object is to defend a third party against the consequences of an agent's or partner's fraud, or to re-instate him, in *statu quo ante.*

Smith's Lead. Cases, (H. & W.,) I. p. 329, 330.
Irving v. *Motley*, 7 Bingl. 543.
Lewis v. *Reed*, 13 M. & W. 834.
Bennett v. *Judson*, 21 N. Y. 238.
Udell v. *Atherton*, 7 H. & N. 171.
Stone v. *Marsh* (Colly on Partner. 406).
Veazie v. *Williams*, 8 How. 174.
Taylor v. *Green*, 8 C. & P. 316.

This case does not admit of the application of the rule that were a firm has reaped the benefits of an illegal act, it must restore the fruits or make indemnification. Its liability for the duties is unquestioned, where the goods are dutiable. Also, if it has received the goods after they become forfeit, trover or replevin, would lie against it, for the goods or their value, without proof of guilty knowledge. But this proceeding, as has been shown, is not for the goods received, or for their value, or for indemnification for the loss of them, or for liquidated damage sor damages in any form, but for a personal penalty.

(*e.*) The rule and the reason for it go further. If the principal or partner has neither authorized the fraudulent act, nor adopted it with knowledge, nor had the benefit of it, yet he may be held to make good a loss arising directly from it, on the principle that "where one of two innocent persons must suffer, &c." For instance, if an agent or partner is authorized to solicit deposits for bankers, and obtains one under false representations, and afterwards converts it to his own use, in fraud of his principal or firm, — it is rather the principal or partnership than the stranger that should bear the loss.

Herne v. *Nichols*, 1 Salk. 289.
Locke v. *Stearns*, 1 Met. 560.
Story on Partner, § 108.
Colly on Partner. § 454.
Story's Agency, §§ 443, 470; 17, 18, 72, 126, 131–3, 227, 228.
Smith's Merc. Law, 56–58.

(*f.*) But in all cases, when the principal or partner has not authorized the act or adopted it with knowledge, he is held liable only *to make good the loss, or to the extent of the consideration and benefit received.*

United States v. *Halberstadt*, Gilpin, 262.
Turner v. *N. B. R. R.* 34 Calif. 3.
Hutchins v. *Turner*, 8 Humphreys, 415.
Smith's Lead. Cas. (H. & W.) 329, 330.
Story's Agency, § 453.
Morly v. *Gaisford*, 2 H. Bl. 442.
McManus v. *Crickett*, 1 East. 106.
Gordan v. *Rolt*, 4 Exch. 365, 2 D. & L. 87.
Sharod v. *L. & N. W. R. R.* 4 Exch. 580, 7 D. & L. 213.
Taylor v. *Green*, 8 C. & P. 316.

VIII. DICTA OF TEXT WRITERS APPARENTLY *contra*.

Whenever the text writers have said that the principal, partner or master is liable for penalties simply punitive, not being liquidated damages, for the acts of an agent, partner or servant, — the statement means that it is not necessary that he do the act in person, or authorize in terms the very act in question. It is to be received with the limitation that he had made it his act, by either originally authorizing it in substance, or by adopting it with knowledge. In these cases the act is his, and he may be liable, as for a crime as well as for penalties. There must always be personal culpability.

Graham v. *Pocock*, Law Rep. 3 Pr. C. Cases, 345.
United States v. *Halberstadt*, Gilpin, 262,
and all cases cited under head IV., *supra*. p.

No case has ever gone beyond this limit. Certain revenue cases in England have been passed down in the text-books connected with general propositions apparently not limited, but they do not go beyond these limits. The culpable knowledge is always an ingredient, and is proved as a fact, either on presumptions alone, arising out of facts proved, or on the facts, or on both. An examination of the cases usually cited will show this abundantly. Indeed, many of them will be found to be not to the point at all.

Attorney-Gen. v. *Burgess*, Bunb. 223 [293]. This was an information for triple value of goods, " which came to the defendant's hands, knowing that they had not paid duties." At the trial it was ruled that if several are engaged in receiving smuggled goods, one may be proceeded against, as it is tort and not contract; and that it is not necessary to prove that the goods came into the defendant's hands, actually and corporally. It was enough if they came under his control, or into the possession and control of a third person by his direction. The knowledge of the defendant that the goods were smuggled, is stated as a fact. The only question was, as to what constituted a coming " into his hands."

The ruling was sustained in banc. The case does not touch the point of the liability of a principal for the act of an agent done without his knowledge, nor does it touch the question of implied or constructive knowledge.

Attorney Gen. v. *Stanyforth*, Bunb. 97 [158]. This suit was for *duties*, and not for penalties. The goods belonged to, and were consigned to the partnership. The partnership, as a firm, were liable for the duties, as a debt, on the ground of ownership and consignment It was immaterial *why* the duties were not paid. The goods were undervalued by the fraud of an agent, and the suit was for the balance of duties which ought to have been paid. There was, in fact, no legal defence.

Attorney Gen. v. *Weeks*, Bunb. 223. This suit was also for *duties*. The question was whether any one but the *actual importer* is liable for duties. *Held* (1), that no one is liable for duties but one having an interest in the goods. *Arguendo*, that on information for treble value for harboring smuggled goods, an interest is not necessary, it being enough if the person harbors the goods with knowledge. *Held* (2) also, that if two are jointly interested in goods, a suit for duties will lie against either, as on a joint bond. *Held* (3), that a factor of a foreign merchant has a sufficient interest to be personally liable for duties. This is all the case.

Rex v. *Manning*, Comyn's R. 616. Information for treble value, for harboring smuggled goods, by any person "to whose hands the goods shall knowingly come." Defendant and one Quoif bought the goods on joint account, defendant paid one-third, and Quoif two-thirds, and they sold the whole and divided the proceeds. Special verdict that defendant knew the goods were smuggled when they were bought. *Held* (1), if two buy goods on joint account, they "come into the hands of both." (2), If in such case one knows and the other does not, of the smuggling, *there is no intendment of knowledge* from the joint tenancy. (3). If they divided the goods before sale, the defendant is liable only for the treble value of his third. (4). In this case, as defendant's knowledge was found, and the facts showed a possession and concealment by him of *all* the goods, he is liable for all.

The case decided nothing as to knowledge, except that it assumes that culpable knowledge must be proved against each party personally. It repudiates the idea of constructive knowledge or liability.

Attorney Gen. v. *Siddon*, 1 Tyrwh. 41, S. C. 1 Cr. & J. 220. Information. The 2d count was for harboring smuggled goods, with knowledge, &c. Verdict, guilty. No objection was made to the verdict, and the defendant was held to have thereby acquiesced in the finding of his harboring with guilty knowledge. The 7th count was for unlawfully using a

wrong permit. This was an act of a servant done in the course of concealing the same goods, on the premises of the defendant. Verdict of guilty, and motion for new trial. The Court refused to disturb the verdict, on the ground that, under all the circumstances, there was *prima facie* evidence that the defendant authorized the servant to carry out the fraud by this means. It was a question only of the sufficiency of the testimony. The decision assumes that the jury must be satisfied that the defendant authorized the act, and that he is not liable to a penalty from the mere fact that it was done by his agent.

IX. In every case where a principal or partner has been proceeded against for penalties for the act of an agent or copartner, it has always been a question for the jury whether the defendant had knowledge in fact, or did authorize the act. There is no case where a person has been held liable to a penalty on the sole ground that the agent or partner had knowledge, or that the act was within the scope of the employment. The knowledge of the agent or partner, and the nature and scope of his employment or business, and the relations of the parties, are always facts to go to the jury, with all other pertinent facts, and the jury is to be satisfied on all the evidence and presumptions that the defendant had knowledge, or authorized the act.

Cases cited under head IV., *supra.* p.

The presumptions on each side go to the jury as presumptions of fact, to be cast into the scales with the facts proved. The jury must be satisfied, on all the facts and presumptions, that the defendants had the knowledge or did authorize the act.

One of the presumptions always is, that no person does or authorizes an act in violation of a statute.

Wilson v. *Rankin,* 6 Best & Sm. 208.
Peachy v. *Rowland,* 13 C. B. 182.
Lyons v. *Martin,* 8 Ad. & E. 512.
Freeman v. *Rosher,* 13 Q. B. 780.
Sissons v. *Dixon,* 5 B. & C. 758; S. C. 8 D. & R. 526, 9.
Earle v. *Rowcroft,* 8 East. 126.
Best on Presumptions [64, 68].
Taylor on Evid. 116.

X. On the question of liability of a principal or partner for an illegal act of his agent or copartner, where knowledge is made by statute an ingredient *sine qua non* to the liability, the rule requiring the knowledge must be the same whether the proceeding be by an action of debt, or an information, or indictment. If a penalty is sued for, the government cannot dispense with the proof of *scienter*, on the ground that the form of action is one under which indemnification or liquidated damages might be recovered.

So, if the rule of law be that an innocent principal or partner is liable only to *make good the loss* accruing to a third party by the act of his agent or copartner, the government cannot make him further liable for a penalty requiring knowledge, by simply adopting a civil action for the recovery of the penalty. The government may, indeed, by that course, deprive the defendant of some of the privileges which he has in criminal proceedings, but cannot alter the principles of law applicable to liability for penalties.

The *consequences* of the agent's or copartner's act, for which the principal or partner is liable, *i. e.*, to indemnify only, or to suffer a penalty, depend on fixed rules of law and cannot be altered by forms of action.

Cooper v. *Slade*, 6 Ho. of Lords Cases, 749.
U. S. v. *Halberstadt*, Gilpin, 262. (That was an action of debt.)
Attorney Gen. v. *Radloff*, 10 Exch. 84.
Taylor on Evid. § 827.

THIRD.

The attention of the Court is respectfully called to the following errors apparent upon the record.

I. SECTION 2, OF THE ACT OF 1823, CANNOT BE CONSTRUED TO APPLY TO THE ILLEGAL IMPORTERS THEMSELVES.

The section applies only to an offence committed after the goods shall have been the subject of a prior offence by which they shall have been "illegally imported," and have become "liable to seizure." There are, then, two acts: *first*, such an act of illegal importation as shall have made the goods liable to seizure; *second*, after the liability to seizure

has attached, an act of receiving, concealing or buying the goods, with knowledge of the illegal importation and liability to seizure.

There are numerous and sufficient laws punishing by fine, penalty or forfeiture, all forms of illegal importation. The act of 1823 does not assume to provide for the original offender, but only for the person who, with knowledge of that offence, shall aid in keeping the goods out of the reach of the government. In order to cover all the methods by which this may be done, the words "receive, conceal, or buy," are used. These words will cover every act of an accessory after the fact.

The section cannot be construed to apply to the illegal importer himself.

(1.) It is confined to an act done after the illegal importation.

(2.) It requires knowledge of the illegal importation, which it were absurd to require of the illegal importer himself.

(3.) It is not the genius of our legislation to sub-divide an offence committed by one person. The illegal importer cannot "receive" or "buy" his goods. If he "conceals" them, it is but an act carrying out the original offence.

(4.) The language is appropriate for an offence in its nature accessorial-after-the-fact, as a receiving of stolen goods, it containing the elements (1) of knowledge, and (2) of receiving and concealing. Such are cases under the Post Office law. Stat. 1825, ch. 64, § 45 (4 Stat. 114). If any person, &c., "Shall buy, receive or conceal, &c., any article, knowing the same to have been stolen from the mail." So, in cases of accessories to robbery, &c., act 1790, ch. 9, § 11 (1 Stat., 14), after any "robbery, every person knowing, &c., who shall receive or take into his custody" ny goods.

So, in case of goods feloniously taken, act 1825, ch 65, § 8 (4 Stat. 116), "If any person on the high seas, &c., shall *buy, receive,* or *conceal* any goods knowing, &c."

Also act 1790, ch. 9, § 17 (1 Stat. 116).

In all these cases, the accessory after the fact is said to "receive" the goods.

(5.) The act the illegal importer is most like to do, after the goods are liable to seizure, is to "sell" them. But neither in the act of 1823, nor in any of the acts referred to, is the word "sell" included.

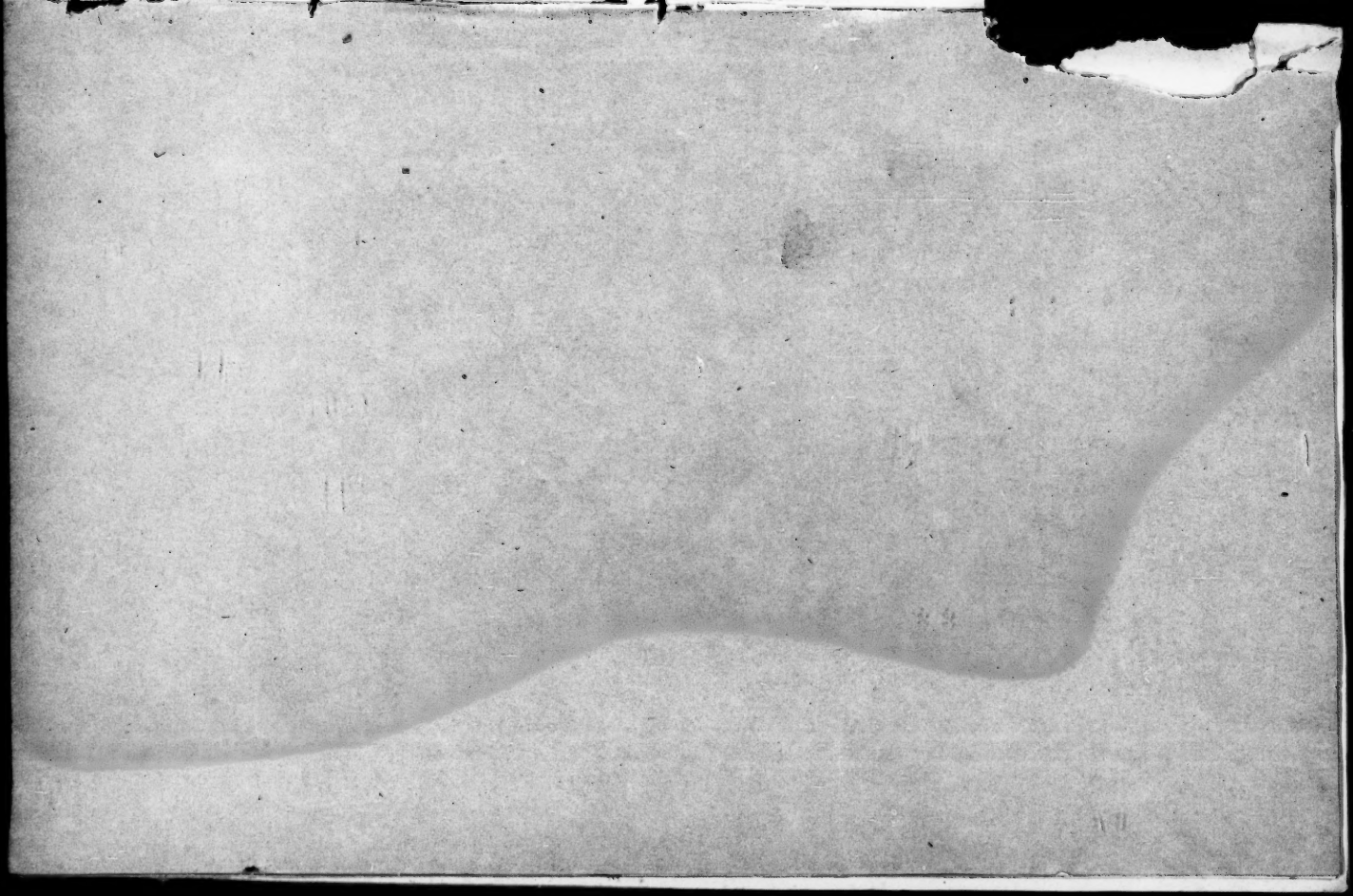
But, where congress intends the penalty to apply alike to the illegal importer and the accessory after the fact, the word "sell" is added. Act 1866, ch. 201, sec. 4 (14 Stat. 179). This section, in terms, applies alike to the illegal importer and to the subsequent accessory; it therefore, to the words "receive, conceal, buy," adds the word "sell."

(6.) As the section under which this suit is brought, uses the language appropriate to accessories after the fact, and omits the word "sell," almost essential in case of the principal, it would be stretching a penal statute to apply it to an importer, solely on the strength of the word "receive." It is only by a forced construction that he can be said to receive his own goods from the Custom House, while the word "knowing," &c., becomes useless. Moreover, this would be the only case in which the original offender has been charged with having *received*.

II. The act of 1866, ch. 201, § 4 (14 Stat. 179), inflicts a penalty for the same offence set forth in the act 1823. This penalty may be less than that of the act of 1823, as it may be a fine of only $50. It must therefore be held to supersede and repeal the penalty under the former act. The proceedings in this suit were commenced after the passage of the later act (Aug. 1866), and are not saved by § 44 of the act (14 Stat. 188).

III. As the defendants were consignees, and themselves did or omitted to do, all the acts at the Custom House which constituted an illegal importing and made the goods liable to seizure, they should have been proceeded against for such acts or omissions, and not under Sec. 2 of act 1823.

R. H. DANA, JR.,
for Plaintiffs in Error.



In the Supreme Court of the United States.

DECEMBER TERM, 1870.

DAVIS R. STOCKWELL AND JOHN L. CUTTER, *Plaintiffs in Error*,
vs.
THE UNITED STATES.
No. 271.

In Error to the Circuit Court of the United States for the District of Maine.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This was an action of debt, originally brought by the United States in the district court of the United States for the district of Maine, on the 2d of April, 1868, against Davis R. Stockwell *et al.*, to recover the amount of forfeitures and penalties claimed on account of alleged violations of the revenue laws in the importation of certain shingles during the years 1863 and 1864, together with the amount of duties claimed to be chargeable thereon.

The declaration contains 23 counts, of which counts numbered 1 to 8 inclusive are drawn under the 2d section of the act of March 3, 1823, (3 Stat., 781,) to recover forfeitures of double the value, respectively, of

each of eight different importations; counts numbered 9 to 15 inclusive under the 1st section of the act of March 3, 1863, (12 Stat., 737,) to recover penalties of the value, respectively, of each of seven of said importations; and counts numbered 16 to 23 inclusive under the 22d section of the act of March 2, 1861, and the 13th section of the act of July 14, 1862, (12 Stat., 192 and 557,) to recover duties on the whole of said importations.

The parties went to trial on a plea of the general issue, and the jury gave a verdict for plaintiffs on all of the counts, except the 7th, 9th, 10th, 11th, 12th, 13th 14th, 15th, and 22d counts, and on these the verdict was for defendants. Judgment was entered accordingly January 31, 1870.

A bill of exceptions having been taken by defendants, the cause was, by them, carried by a writ of error before the circuit court of the United States for said district, which affirmed the judgment of the district court. The defendants next sued out a writ of error to the circuit court to bring the record up to this court for revision. The last-mentioned writ is tested the first of September, 1870, was filed and citation issued thereon the same day, and the latter served on the 9th of same month.

It appears, from the bill of exceptions, that, before the trial, a *dedimus potestatem* was obtained by the attorney for the United States, addressed to a judge in New Brunswick, requesting him to take the deposition

of one Thomas Dowling upon interrogatories and cross-interrogatories thereto annexed. (Record, pp. 18 to 20, where the commission and the return thereto are set out.) Defendants objected at the trial that the return failed to show due execution of the commission, "as it did not appear that the magistrate himself examined the witness, or that he reduced or caused to be reduced to writing the deponent's answers, or that he reduced them or caused them to be reduced to writing in his own presence." These objections were overruled, and the deposition admitted. (Record, p. 20.) This forms one of the exceptions.

It further appears that a search-warrant was obtained, by virtue of which the marshal entered the counting-room of defendants, and seized and carried away certain account-books, letters, &c., (see Record, pp. 20 and 21 for warrant and return thereto;) and that the account-books, &c., so seized, were placed by the court in the custody of the United States attorney, who offered them in evidence. Defendants objected, that the court was not authorized to issue, nor the marshal to execute the warrant in question, and that the United States attorney could not, against the consent of the defendants, put in evidence against them papers from his own possession, obtained and placed there by force of the warrant; but the objection was overruled, and the papers admitted. (Record, p. 21.) This constitutes another of the exceptions.

Defendants prayed the court to instruct the jury as

follows, respecting the counts for double value under the act of 1823:

"1. That the counts were insufficient, because they did not so describe the shingles as to show whether they were subject to duties.

"2. That a civil action will not lie to recover the double value, and that the United States cannot recover both the double values and the duties under this declaration.

"3. That the counts do not sufficiently aver the primary fact that the shingles were, in fact, illegally imported.

"4. That the jury must be satisfied, as to each defendant, that he knew that the shingles had been illegally imported, and were liable to seizure, before he received, concealed, or bought the same; and that such receiving, concealing, or buying, must have been with an intent to defraud the revenue."

And as follows, respecting the counts to recover duties under the acts of 1861 and 1862:

"1. That they were insufficient, because they do not so describe the shingles as to show that they were subject to duties.

"2. That they do not show by force of what statute, or by what fact or circumstance, the shingles were subject to duties.

"3. That under the reciprocity treaty, (see 10 Stat., 1090, Art. 3,) shingles of provincial origin were not subject to duty in 1863 and 1864, in the United States, although manufactured in part, if some process of manufacture still remained to be performed, to make them completely manufactured; as, if they were shaved smooth and to the edge, but were not jointed, that is, the sides were not planed or otherwise made straight and parallel."

These instructions the court declined to give, but

ruled that the counts in the declaration were sufficient in form; that a civil action would lie for the double values under the act of 1823, and that the plaintiffs could recover under this declaration both the duties upon the shingles, and double their value; that, under the treaty, shaved shingles would not be free of duty, if the growth and produce of New Brunswick, but would be subject to such duty as Congress should impose on articles of that description; that if the jury were satisfied that the shingles which are the subject matter of controversy were shaved shingles, the growth and produce of New Brunswick, then the description in the counts as "shingles subject to duty," is sufficient, &c. (Record, pp. 17 and 18.)

And as to any shingles having been, in fact, illegally imported, and as to the knowledge of the defendants that the shingles had been illegally imported, the court ruled as follows:

"That if Leeman Stockwell, [who was, at the period referred to, a member of the firm of Stockwell & Co., but who died after the commencement of the suit,] * * * in the course of the business, and for the common and joint benefit of himself and D. R. Stockwell & Co., went into New Brunswick, and there knowingly purchased and received on their joint account shaved shingles, the growth and produce of New Brunswick, and afterwards he, by himself or his agents, &c., knowingly sent such shingles to his copartners, D. R. Stockwell & Co., at Bangor, fraudulently documenting them as the growth and produce of Maine, so that thereby, in the regular course of the business, they should be, and were, admitted and received into the country

by the defendants as the growth of Maine, the shingles so imported were illegally imported, and liable to seizure, and these defendants, being then his partners, are in this action chargeable with, and bound by, this knowledge of Leeman Stockwell, if such was his knowledge, viz., that the shingles were the growth and produce of New Brunswick, liable to duty and seizure, being illegally imported. This being a civil action, and not a criminal prosecution, the knowledge of one of the firm on these matters, in this suit, is to be deemed the knowledge of the defendants, his copartners in the shingle business. If Leeman Stockwell, as a member of the firm engaged in the shingle business, at the time of the importation and reception of the shingles at Bangor, knew that they were Province shingles, liable to duty and seizure, and illegally imported, it is not necessary for the Government to prove that the defendants personally had actual knowledge of these facts, which were then within the knowledge of their partner, Leeman Stockwell." (Record, p. 18.)

And as to the defendants knowingly receiving, concealing, and buying the shingles, the court ruled as follows:

"If, with the knowledge, as before stated, on Leeman's part, that the shingles were illegally imported and liable to seizure, D. R. Stockwell & Co., in the usual course of the business, received the shingles at Bangor, and they were disposed of by them, and the profits of the business divided, &c., the jury are authorized to find that the defendants, being Leeman's partners, received the shingles, knowing the same were illegally imported and liable to seizure." (Record, p. 18.)

The refusal to give the instructions prayed by the defendants, and the rulings of the court to the jury, as above stated, comprise the remainder of the exceptions.

ARGUMENT.

I.

As to the deposition of Dowling taken under the *dedimus*. This was objected to, on the ground of insufficiency in the return to the commission.

Though greater distinctness in the statement of the commissioner was, perhaps, desirable, there is nothing contained in it to indicate the omission of anything required, or the departure from any of the directions of the commission. Inaccuracies, and mistakes, and misdoings, are not to be presumed. When the return of the commissioner is fully consistent with the exact and rightful performance of his duty according to instructions, a violation of such instructions is not to be inferred, nor is a construction to be put upon the language employed in the return which will exclude the testimony. Even if slight irregularity on his part had occurred, it was still within the discretion of the court to admit the deposition which was taken abroad.

Blake *vs.* Blossom, 15 Me., 394.

Wright *vs.* Stiles, 29 Me., 164.

Referring to the objections to the return, in the order in which they appear in the record, the court below conclusively answered them as follows:

"1. Erroneous in fact as the first objection is, it is only necessary to refer to the statement made in the return for its correction, where it is stated that an examination on oath of the deponent was had and taken before me, which certainly is a substantial compliance with the directions of the commission.

"2. Interrogatories and cross-interrogatories accompanied the commission, and the return is, that 'the following are the answers' of the deponent given to the several interrogatories and cross-interrogatories thereto annexed; and, in conclusion, the return states, 'that the signatures of the deponent affixed to this deposition are in his handwriting, and made in my presence.' Depositions *de bene esse* may be reduced to writing by the deponent, as well as by the magistrate, and the court is not induced to give the commission in the case a construction which would prohibit the magistrate from granting that privilege to the deponent, if exercised in his presence, (1 Stat., 89.) Directed, as the magistrate was, to permit no person other than a clerk to be present during the examination, except the deponent and himself, and as it does not appear that any clerk was appointed by the magistrate, the presumption is that no other person than the deponent and the magistrate was present at the examination; and if not, then it must be presumed that the answers were reduced to writing either by the deponent or the magistrate; and if by either, then it is clear that the second objection cannot be sustained.

"3. Answers were given by the deponent to the several interrogatories and cross-interrogatories annexed to the commission in an examination on oath before the magistrate, and the return states that the signatures affixed to the deposition are in the handwriting of the deponent, and that they were made in the presence of the magistrate, which is all that need be said in reply to the third objection."

II.

With regard to the objections to the issue and execution of the search-warrant, and the admissibility in evidence of the books, papers, &c., seized thereunder—

1. Power to issue such a warrant is conferred upon

the district judge by section 2 of the act of March 2, 1867, (14 Stat., 547,) under which this warrant was issued.

By act of July 31, 1789, section 24, (1 Stat., 43,) it was provided that where collectors, naval officers, &c., should have cause to suspect a concealment of goods subject to duty in any particular dwelling-house, store, &c., they or either of them should, upon application on oath to any justice of the peace, be entitled to a warrant to enter such house, &c., (in the day time only,) and there to search for such goods, &c. Authority to procure such warrants upon proper application to any justice of the peace was continued by the act of August 4, 1790, section 48, (1 Stat., 170.) The same was reenacted by the act of March 2, 1799, section 68, (1 Stat., 677.) District judges were first authorized to issue such warrants by section 7 of the act of March 3, 1863, (12 Stat., 740.) Under that act, service of the warrant was to be made by the collector; but the act under which this warrant was issued, (14 Stat., 547,) provides that it shall be directed to the marshal of the district.

Thus warrants to search dwelling-houses, stores, and other places, for concealed goods alleged to have been illegally imported, and for the seizure of the goods for trial, have been allowed by law from the organization of the revenue system to the present time; and it is not perceived that any greater objection can be taken to a warrant to search for books, invoices, and other papers

appertaining to an illegal importation than to one authorizing such a search for the imported goods.

The proposition that the power to issue such warrants is limited to criminal cases finds no support in the acts of Congress nor in any decision of the federal courts. Individuals cannot sue out or employ such a process in the course of civil proceedings, or for the maintenance of a mere private right. (Robinson *vs.* Richardson, 13 Gray, 454.) But it cannot be admitted that Congress, in providing means to prevent, detect, and punish frauds upon the public revenue, is forbidden to authorize the use of such a process, merely because the penalty imposed on the person violating the law and perpetrating the fraud may be recovered otherwise than by indictment.

The acts charged in the declaration were unlawful acts, declared to be such for the prevention of fraud, and for the protection of the public revenue, and as such the acts charged were public wrongs, which subjected the perpetrators to the penalty provided by law; and it is as clearly competent for Congress to authorize the district judges to issue a warrant in such a case to search for and seize the invoice, books, and papers, evidencing such a fraud, as it would be for a State magistrate to grant a warrant to search for and seize stolen goods.

Stockwell *vs.* United States, Int. Rev. Record, for September 10, 1870.

2. But if there were any want of authority for issu-

ing, or any informality in the warrant, or in the service thereof, still the objection to the admissibility of the books and papers in evidence cannot avail. For the law deliberates not on the mode by which it has come to the possession of the party, but on its value in establishing itself as satisfactory proof.

La Jeune Eugenie, 2 Mason, 441.

Being pertinent to the issue, and offered in the same condition in which they came from the defendants, they were properly admitted in evidence.

Com. *vs.* Dana, 2 Metcalf, 329.

Leggett *vs.* Tollewey, 14 East., 302.

Jordan and Lewis, 14 East., 306, note.

Nor is there any force in the objection that those books and papers were improperly put into the hands of the district attorney. The only object or purpose of seizure is to procure evidence of the commission of frauds against the perpetrator. Unless, when obtained, the evidence could be used, the proceeding would be a vain one.

Papers so seized are declared by the act of Congress to be "subject to the order of said judge," but he must allow the examination of the same by the Collector, or by any officer authorized by the Collector for that purpose. Invoices, books, or papers, so seized, may be retained by said judge, as long as, in his opinion, the retention thereof is necessary, and, like the implements of crime, or stolen goods seized on search-

warrants, they may in a proper case be given in evidence against the offender and perpetrator of the fraud.

Com. *vs.* Dana, 2 Metcalf, 337.

III.

The 22d section of the act of March 2, 1861, (12 Stat., 192,) provides that there shall be levied, collected, and paid, "on manufactures of wood, and of which wood is the chief component part," if imported from foreign countries, and "not otherwise provided for," a duty of 30 per centum; and the 13th section of the act of July 14, 1862, (12 Stat., 557,) added 5 per cent. *ad valorem*, to the duties imposed by the prior act. Manufactured of wood, as shingles are, they were clearly within the before-mentioned provisions of the revenue laws, and as such subject to a duty of 35 per cent. *ad valorem*, unless they were exempted by the terms of the reciprocity treaty, (10 Stat., 1090,) which was in force at the date of the several importations. By that treaty it is agreed that certain articles enumerated therein, "being the growth and produce of the aforesaid British colonies or of the United States," shall be admitted free of duty into each country, respectively; and among these articles are "timber and lumber of all kinds, round, hewed, and sawed, unmanufactured in whole or in part."

Unmanufactured timber or lumber of any kind, as well such as was hewed or sawed, as that which was round, if otherwise unmanufactured in whole or in part,

was entitled under the treaty to be admitted to entry as goods free of duty. But if the timber or lumber was otherwise manufactured than by a rough hewing or sawing, whether in whole or in part, the produet of such rough hewed or sawed timber or lumber became and was subject to duty as provided in the revenue laws of the United States in operation at the time the same was imported.

Rockwell *vs.* United States, Int. Rev. Rec. 10th Sept., 1870.

Regulations upon the subject were promulgated by the Secretary of the Treasury in 1857, in which is contained a schedule of articles subject to duty under the revenue laws then in operation, and shingles, shingle bolts, and shingle wood are included in the schedule. Appended to that schedule is a general regulation, providing that "articles of wood remain liable to duty under the existing tariff, if manufactured in whole or in part by planing, shaving, turning, splitting, or riving, or by any process of manufacture other than rough hewing or sawing." It has been held by this court that that was a sound construction of the stipulation contained in the treaty.

United States *vs* Hathaway, 4 Wall., 404.

Round, hewed, and sawed lumber are admitted free of duty, if otherwise unmanufactured in whole or in part. The article, say the court, may be round, hewed, or sawed, but if it has undergone the process of manufacture, even in part, it is taken out of the free list.

United States *vs.* Quimby, 4 Wall., 408.

IV.

Debt is maintainable, and is the proper action to recover forfeitures and penalties incurred by force of the act under consideration.

United States *vs.* Bougher, 6 McLean, 281.
Walch *vs.* United States, 3 W. & M., 342.
United States *vs.* Allen, 4 Day, 474.
United States *vs.* Lyman, 1 Mason, 482.
Jacob *vs.* United States, 1 Brock., 520.
Act of 1823, ch. 58, sec 5, 3 Stat., 781.
Act of 1799, ch. 22, sec. 89, 1 Stat., 695.

The same form of action is an appropriate remedy to recover unpaid duties, in cases where goods from a foreign country have been imported without their payment.

Penalties and duties are alike debts due to the Government. Payment of either does not extinguish the other. The duty becomes due by the importation; the penalty grows out of the fraud. They arise from different sources, and may both be demanded and recovered.

United States *vs.* Lyman, 1 Mason, 482.

As for the joinder of counts for both penalties and duties, it is well settled, that whenever the same plea may be pleaded, and the same judgment given on two counts, they may be joined in the same declaration; and the fact that the duties are to be paid in gold is not sufficient to take the case out of the operation of

that rule of pleading, as that matter is regulated by statute.

Stockwell *vs.* United States, Int. Rev. Rec., *supra.*

Brown *vs.* Dickson, 1 T. R., 276.

Cheang Kee *vs.* United States, 3 Wall., 320.

V.

The defendants are chargeable with the knowledge procured by their partner and agent, Leeman Stockwell, who transacted the business.

The Distilled Spirits, 11 Wall., 368.

Castle *vs.* Bullard, 23 How., 188, 189.

Stockwell *vs.* United States, Int. Rev. Rec. *supra.*

Partners constitute as such but one person in law; and the act of one in the business constituting the subject matter of the partnership is *civiliter* the act of all. They are liable *in solido* for the tort of one of their number, if that tort was committed by him as partner, and in the course of the partnership business.

Lock *vs.* Stearns, 1 Met., 560.

Hawkins *vs.* Appleby, 5 Sandf., 421.

Glascow Exchange Co., *vs.* Drew, 2 Macqueen, 103.

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